

## Legality of Taking pictures during Criminal Investigations in Algerian Legislation



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### Abstract

This article discusses the act of taking pictures as one of the contemporary, unique, and remarkable measures in the realm of inquiry into crimes and severe transgressions against society and the legal system. It aims to uncover the truth about these crimes and their perpetrators. The legislator has regulated its provisions under Law No. 06-22 dated 20/12/2006, amending and supplementing the Code of Criminal Procedure, in accordance with the advancements experienced by the international community in the field of crime prevention and detection. This is achieved through the use of modern and technological means, particularly highlighting the legality of this procedure and the formal and objective conditions required for its validity in Algerian legislation, for its admissibility along with the evidence obtained from it.

### Keywords

Special procedures;  
Taking pictures;  
Serious crimes;  
Essential procedure;  
Invalidity.

## مشروعية التقاط الصور أثناء التحقيقات الجزائية في التشريع الجزائري

### ملخص

### الكلمات المفتاحية

إجراءات خاصة؛  
التقاط الصور؛  
الجرائم الخطيرة؛  
إجراء جوهري؛  
بطلان

يتناول هذا المقال إجراء التقاط الصور باعتباره أحد الإجراءات الحديثة والخاصة والاستثنائية في مجال التحري والتحقيق عن الجرائم المتلبس بها والجرائم الخطيرة على المجتمع والنظام وكشف الحقيقة حولها وحول مرتكبيها، والذي نظم المشرع أحكامه بموجب القانون رقم 22-06 المؤرخ في 2006/12/20 المعدل والمتمم لقانون الإجراءات الجزائية، مسيرة للتطورات التي عرفها المجتمع الدولي في مجال مكافحة الجريمة وإثباتها عن طريق الاستعانة بوسائل حديثة وتكنولوجية وخاصة، ويبيّن مدى مشروعية هذا الإجراء وشروطه الشكلية والموضوعية المتطلبة لصحته في التشريع الجزائري، للاعتداد به وبالدليل المتحصل عنه.

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## Introduction:

The legislator allows for the use of some modern and exceptional special procedures, when necessary, aimed at investigating crimes caught in the act, as well as investigating and uncovering the truth about certain crimes that pose a serious threat to society's security and public order. Among these procedures is the act of taking pictures. This important mechanism was not regulated by the legislator before 2006, due to disputes in jurisprudence and comparative criminal legislation regarding its legality. This is because it touches upon one of the most fundamental personal rights, closely related to the individual, which cannot be violated or tampered with—the right to one's image. This right is protected under international and regional agreements concerning human rights and constitutions.

Despite the general principle that violation of the sanctity of an individual's private life and taking their pictures is unacceptable, given that the right to a private life is one of the fundamental rights and freedoms guaranteed constitutionally (Article 47 of the 2020 constitutional amendment<sup>1</sup>); however, the inability of traditional investigative channels to uncover the threads of some serious crimes threatening societal security has led modern jurisprudence and legislation to permit the use of some special and exceptional procedures. These include the interception of wire and wireless communications, audio recording, picture, infiltration into criminal gangs, electronic surveillance and infiltration, monitored delivery, and allowing the sacrifice of individual private interests for the sake of these procedures to protect the public interest of society, which is manifested in establishing justice, apprehending criminals, and revealing the truth. This is achieved through the implementation of advanced technological equipment allowing for photo capture, recording conversations, phone calls, and electronic communications.

Disagreement arises regarding the stage at which these modern and exceptional special procedures can be used in criminal matters and the value of the evidence obtained through them. Some only allow such processes to be used subject to legal restrictions during the first phase of the judicial inquiry, omitting the preliminary investigation stage restrictions and formal and objective conditions, failing which they could be rendered legally and substantively void in some cases.

Regarding the specific procedure of taking pictures, the legislator implicitly mentioned it for the first time during the investigation and inquiry into corruption crimes, under Article 56, paragraph 1, of Law No. 06-01 dated 20/02/2006 which deals with fighting and preventing corruption<sup>2</sup>. However, it was not explicitly mentioned in the Algerian Code of Criminal Procedure until Law No. 06-22 dated 06/12/2006, amending and supplementing the Code of Criminal Procedure, in Chapter Four of the Second Section of the First Book of the Code of Criminal Procedure (Article 65 repeated from 5 to 10<sup>3</sup>), in which the legislator regulated the formal and substantive conditions required for the validity of this special procedure. Violating some of these conditions results in explicit legal nullity, while violation of others leads to substantive nullity. These conditions are considered important legal guarantees to preserve the integrity of the private lives of persons who are being treated under this process.

The problem of this study can be formulated in the following main question:

**What is the legality of resorting to this special and exceptional procedure during criminal investigations in Algerian legislation? And what are the formal and substantive conditions required for its validity?**

To answer the aforementioned problem, we will adopt a descriptive-analytical method and follow the following dual plan:

- Discuss the legality of the procedure of taking pictures.
- Describe the requirements for the legitimacy of the photo-taking process.

## 1. Legality of Taking Pictures

Before discussing the legitimacy of the process of capturing photographs, it is essential to discuss the idea of this procedure, which touches upon the sanctity of individuals' private lives. Then we will delve into the legislative, jurisprudential, and judicial stance regarding its use.

### 1.1 Definition of Taking Pictures

To understand the concept of photographing, we will define the term "image," then define the right to an image, and finally define the procedure of taking pictures as a specific criminal investigative procedure in itself.

## **1.2 Definition of Image**

The term "image" in the language means the shape, drawing, engraving, and description of a thing. "It was imaged to me" means it was imagined by me. To "imagine" something is to conceive of its form or to fantasize about it. The "image" of a thing is what actually realizes the object, and "images" refer to statues<sup>4</sup>, meaning resemblance and comparison. Linguistically, an image is about shape and similarity, and its plural is "images," which means characteristic. It can also mean type, as in "this matter comes in three forms," and the image of an issue is its attribute, while the image of a thing is its abstract essence. To "image" something or someone is to draw it on paper or a wall or similar, with a pen or a camera, and to "imagine" something is to visualize and conjure its image in one's mind<sup>5</sup>.

The word "image" and its derivatives appear in the Quran in several verses, such as: "In whatever form He willed has He assembled you" <sup>6</sup>, "and formed you and perfected your forms" <sup>7</sup>, "It is He who shapes you in the wombs"<sup>8</sup>, and "And We have undoubtedly made you, [O people], and bestowed upon you [human] form"<sup>9</sup>, where "picture" is refers to the form bestowed by God Almighty upon humans, perceived visually and intellectually, distinguishing them from much of His creation<sup>10</sup>.

An image is also defined as the representation of a person or thing through engraving, sculpting, drawing, a photographic image, or film<sup>11</sup>, serving as a revealing mirror of the person and reflecting the human personality, not just in its physical or corporeal appearance but also in its moral aspect. It reflects a person's emotions and feelings<sup>12</sup>, embodying their physical and mental characteristics, expressing their emotions and reactions of sadness and anger, thus allowing them to be recognized and distinguished from others<sup>13</sup>. In criminal investigations, the images captured, whether photographic or by modern devices<sup>14</sup>, hold significant importance in the evidence process due to their scientific value, lending them a level of credibility that may not be present in other evidential methods. They act as a clear voice and speaking evidence of a crime when free from distortion, deception, and editing<sup>15</sup>.

## **1.3 Definition of the Right to an Image**

One of the essential elements covered by the right to privacy is the right to an image.

Since an image is a prominent feature of an individual and an external stamp, it expresses their emotions and feelings, outlining their physical features. It serves as a mirror revealing one's essence and inner aspects<sup>16</sup>. The ability for each individual to approve or disapprove of the taking, copying, using, or publication of their image, preventing distortion or exploitation. Individuals possess the right to object to the production or dissemination of their image, regardless of the means used, without their consent<sup>17</sup>. This right is closely associated with personal identity, and every individual has the right to protect it from arbitrary infringements or violations according to the procedures established by law<sup>18</sup>.

## **1.4 Definition of Taking Pictures**

The procedure of taking pictures is considered a distinct procedure, different from wiretapping, audio recording, electronic surveillance<sup>19</sup>, and video surveillance<sup>20</sup>. Some have defined it as "placing small-sized cameras in specific locations to capture and record images that aid in revealing and documenting the truth"<sup>21</sup>. It can also be defined as "capturing images of one or more individuals in a private or public place using special devices that capture either images or audio or both, without the knowledge of the person under surveillance, using cameras, video cameras, digital cameras, mobile phone cameras, unmanned aerial vehicles, helicopters, or any fixed or portable imaging device, provided that it is necessary." Despite the intrusion into an individual's private life that picture entails, it has an impact in conveying an accurate image of the facts that can be considered evidence if guarantees are provided to ensure non-interference with others<sup>22</sup>.

Pictures play a significant role in forensic evidence and have a stronger impact than written or verbal testimony. Images are more firmly entrenched in the mind compared to words, especially when they are dynamic and precise in capturing the facts, expressing them explicitly, and characterized by honesty and lack of deception<sup>23</sup>. They provide an accurate representation of the state of a thing, someone, or place at the crime scene<sup>24</sup>.

## **1.5 The Position of Law, Jurisprudence, and Judiciary on Image Capturing**

In this section, we will endeavor to address the stance of the Algerian legislator, then the stance of jurisprudence, and finally, the stance of the Algerian judiciary regarding resorting to capturing images during criminal investigations and judicial inquiries.

## 1.6 The Algerian Legislator's Stance on Capturing Images

The lawmaker broke from the established policy of outlawing and making it illegal to take pictures of people in Article 303 bis (1) of the Criminal Code, and their retention (Article 303 bis 1<sup>25</sup>), and photographing in public structures and institutions (Article 149 bis 3). The legislator allowed the capture of images of individuals or multiple individuals present in a private place to curb the escalation of crime rates<sup>26</sup>, provided obtaining prior permission or authorization from the competent judge. However, this was permitted in public places without the need for such permission or authorization because the public nature of such places legitimizes picture and negates privacy, as the presence of individuals in public places implies implicit agree to be captured on camera.

Law No. 06-23, dated 20/12/2006, regulated the process of taking pictures without the knowledge of the individuals involved for the first time with the intention of making it easier to gather evidence and identify the people who commit certain major crimes exclusively, as provided in Article 65 bis 5, paragraph 1. This was intended to confront the difficulties that may confront judicial police officers, given these actions' peculiarity and seriousness, as well as their use of contemporary means of communication among their perpetrators<sup>27</sup>. These crimes include<sup>28</sup>:

- Crimes caught in the act.<sup>29</sup>
- Contraband crimes.
- Organized crime crossing national borders.
- Crimes related to automated data processing systems.
- Money laundering crimes.
- Terrorism crimes.
- Crimes related to legislation on banking.

The legislator also took similar measures under some special laws related to the following crimes:

- Corruption crimes (Article 56 of Law No. 06-01<sup>30</sup>).
- Smuggling crimes (Article 33 of Order No. 05-06 dated 23/08/2005 concerning combating amended and complementary smuggling.<sup>31</sup>).
- Neighborhood gang crimes (Article 20 of Order No. 20-03 dated 30/08/2020 concerning preventing and combating neighborhood gangs<sup>32</sup>).
- Kidnapping crimes (Article 22 of Law No. 20-15 dated 30/12/2020 concerning preventing and combating kidnapping crimes<sup>33</sup>).
- Crimes related to information and administrative document forgery (Article 27 of Order No. 21-09 dated 08/06/2021 concerning the protection of information and administrative documents<sup>34</sup>).
- Human trafficking crimes (Article 36 of Law No. 23-04 dated 07/05/2023 concerning preventing and combating human trafficking<sup>35</sup>).
- Forgery and use of counterfeit crimes (Article 15 of Law No. 24-02 dated 26/02/2024 concerning combating forgery and the use of counterfeit<sup>36</sup>).

## 1.7 The Jurisprudential Stance on Resorting to Capturing Images

Some aspects of jurisprudence lean towards disallowing the capturing of individuals' images, considering it an extremely invasive procedure on their private lives and their right to an image. Conversely, another aspect of jurisprudence permits the use of this procedure and other modern techniques to obtain distinctive evidence for certain serious crimes, while some remain cautious about its use and impose a set of limitations and requirements for using it, as well as acceptance of evidence derived from it.

## 1.8 The Jurisprudential Perspective Rejecting the Use of Image Capture

This perspective prioritizes individual privacy over public interest and rejects the use of image capture procedures during criminal investigations and judicial inquiries. It deems such actions inherently unjustifiable, especially when conducted covertly in private places<sup>37</sup>, while allowing them in public places and permitting investigative authorities to conduct them, arguing that they do not infringe upon individuals' privacy rights. This is because a person's presence in a public place removes them from the realm of privacy and exposes them to the view of others, making their features and appearance public property, and granting others the right to observe and see them, just like any other object<sup>38</sup>. This perspective justifies its rejection based on the following points<sup>39</sup>:

- The intrusion of modern technology in sound and image, altering them in ways that deviate from the truth, may lead to the deletion, modification, or relocation of certain words on a recording cassette or by appending photographs to the initial ones<sup>40</sup>.
- The growing adoption of security cameras by investigative authorities is merely an indication of the increasing influence of manufacturing companies on governments, rather than a measure that leads to a sense of security<sup>41</sup>.
- Recording private conversations and capturing images covertly in private places are illegitimate means that conflict with the right to respect individuals' private lives, protected constitutionally and legally. They are considered an aggression against their right to solitude, secrecy, and their right to an image. Every person has secrets that they keep to themselves, and they trust in their privacy during their solitary moments. No one has the right to intrude upon their solitude, force them to share their secrets<sup>42</sup>, or publish, display, or use them without their permission and prior consent.
- Eavesdropping, spying, or snooping behind closed doors, even if it is the only way to uncover the truth, is not permissible. Likewise, secret recording and filming of events in private places, even if these events are punishable by law, and even if the devices are placed in a public place, are considered invalid evidence<sup>43</sup> and cannot be relied upon for proof. Such practices contradict the principle of the presumption of innocence and are unethical means of evidence. They presuppose resorting to deceit and luring the targeted individual into a situation that incriminates them in the crime or induces them to accuse themselves. This is as reprehensible as violence in all its forms<sup>44</sup>.
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## **2. The Supportive Jurisprudential Stance Towards the Use of Picture**

In contrast to the jurisprudential stance that rejects the use of picture, another aspect of jurisprudence leans towards permitting it to solve the secrets behind a few significant crimes that endanger the safety of society and the lives of its members. These offenses

often lack evidence against their perpetrators. This perspective prioritizes public interest over personal interest, despite violating the right to one's image, one of the most basic human rights. There can be exceptions in certain cases to photograph individuals and violate the sanctity of their personal lives if the necessity of primary judicial investigation requires it. This perspective justifies the legitimacy of this action as follows:

- The default principle for humans is that they have the right to keep their private secrets, which represent their lives, their family's lives, and their personal relationships. However, this right, protected by the law, is not absolute. It can be breached in situations where the needs for justice or security, as well as the interests of society, compel it, provided that disclosing or accessing these secrets serves the intention of exposing the truth.
- As a result, there are limitations on one's rights to one's image as well as to confidentiality and privacy. As long as a balance is maintained between an individual's right to preserve the privacy of their private life and the public interest in solving the crime's mystery and capturing its perpetrators, the law permits circumventing them when it is in the best interests of primary judicial investigation and the revelation of crimes and their perpetrators<sup>45</sup>.
- The utilization of contemporary technology in images augments the potential of investigation authorities and increases their efficiency, leading to achieving both general and specific deterrence, thereby reducing crime rates<sup>46</sup>.
- Picture provides a comprehensive and accurate impression of the crime scene, detailing its contents, elements, and characteristics, while reducing human errors that investigators may commit or overlook. It offers a precise image that can be referred back to<sup>47</sup>. Additionally, picture stimulates the memory of witnesses to recall important details that they may have forgotten when giving their testimony. It also reduces the need for investigative authorities and the court to physically visit the crime scene for examination and to reenact the crime. Moreover, it helps the court determine whether there was coercion or psychological pressure on the witness, suspect, or accused, providing greater credibility and validity compared to oral or written testimonies alone<sup>48</sup>.

### **2.1 The Cautious Jurisprudential Approach to the Use of Picture**

Some aspects of jurisprudence lean towards accepting the use of picture in criminal evidence, provided that a set of reservations and restrictions are observed. These restrictions are considered necessary legal and technical guarantees for the admissibility of visual photographic evidence in criminal prosecution, eventually guaranteeing the defense and upholding of individual liberties and rights. The following are the most significant limitations<sup>49</sup>:

- Utilizing modern means, including recording and imaging devices, enables the uncovering of certain serious crimes within society and exposes their perpetrators, particularly in light of the continuous increase in organized crime rates. Traditional investigation procedures often fail to uncover these crimes.

- Providing judicial investigative authorities with effective means to combat such crimes facilitates their detection, even while they are in progress. Therefore, allowing the use of more effective tools in crime fighting and permitting such special procedures is permissible, provided that stringent legal controls are in place<sup>50</sup>.
- Obtaining permission from individuals before capturing their images and ensuring transparency throughout the process is crucial. Any picture that contravenes this condition is deemed invalid, and any evidence derived from it is nullified, as long as it is found to be in violation of integrity and honesty in evidence acquisition.
- It is necessary to obtain prior judicial permission or authorization from the competent judicial authority for picture, except in cases of public danger threatening societal public order and security. The image must be taken with the intention of exposing the truth in a reasonable manner that respects the rights, freedoms, and private lives of individuals.
- It is imperative to document picture procedures in official records, including examining photographic tapes to ensure their authenticity and safeguarding them against manipulation, tampering, alteration, destruction, erasure, or substitution.
- In truth, determining the legality or illegality of picture and the use of imaging devices by judicial investigative authorities, and consequently the evidence derived from them, is not straightforward. These devices are double-edged swords: when used properly, they are legitimate tools, resulting in admissible evidence; however, misuse renders them illegitimate means, and any evidence derived from them becomes inadmissible<sup>51</sup>.

## 2.2 The Algerian Judiciary's Stance on Resorting to Picture

The Algerian judiciary has not explicitly addressed the legality of using picture in criminal investigation and inquiry. However, by referring to some judicial decisions from the Supreme Court, we can discern the judiciary's stance regarding the possibility of resorting to picture for certain crimes and the validity of evidence derived from it.

In a decision issued on 24/06/2009, the Supreme Court excluded the proof of adultery through a video tape and established the principle that "the video tape is not considered evidence of adultery? Evidence of adultery is multiple and includes:

- The report of the crime scene examination, prepared by a judicial police officer,
- Acknowledgment contained in letters or documents issued by the accused,
- Judicial acknowledgment<sup>52</sup>.

This decision stated that "adultery cannot be proven by all means, but is subject to specific Methods of proof, as implied by the limitations on the methods of demonstrating adultery in Article 341 of the Code of Criminal Procedure. However, the contested decision relies on proving adultery through a video tape that is not from the Supreme Court, making it unacceptable as evidence in this case." This ruling demonstrates the Algerian judiciary's stance on the legitimacy of utilizing picture as evidence in some crimes. The Supreme Court emphasized the need to follow specific procedures and legally acceptable means to prove these crimes. Therefore, it appears that the Algerian judiciary relies on the principle of determining the acceptable means of proving crimes according to the law, indicating a cautious stance towards the use of picture as evidence, especially in cases involving specific crimes such as adultery.

"Clear and not shown to the registered individuals, and this means does Not be covered by the methods or supporting documentation specified in Article 341 of the Code of Criminal Procedure. In more Supreme Court decisions pertaining to demonstrating "the offense of issuing a check without sufficient funds," In the absence of the original check, the ruling accepted a photocopy as valid evidence in the criminal proceedings, as long as there was verification of the check's existence is fulfilled. However<sup>53</sup>, accepting the use of a photocopy to prove the offense of issuing a check without sufficient funds by the Supreme Court does not necessarily imply the possibility of resorting to picture to prove other crimes punishable under Algerian criminal law outside the scope of crimes exclusively defined in the law.

## 3. Objective and Formal Conditions for the Validity of Taking Pictures

The legislator stipulates a set of formal and objective restrictions that must be observed during the activity of photographing. These rules attempt to reconcile personal privacy rights with the state's paramount interest's private lives without violation<sup>54</sup>. The validity of evidence obtained from taking pictures is subject, like all other criminal evidence, to the idea of evidence's authenticity. If the acceptance of taking photos is undermined, the evidence obtained from it becomes invalid and cannot be relied upon. Moreover, the person who took the pictures may face criminal, disciplinary, and civil consequences<sup>55</sup>. In this second section, we will attempt to address the objective conditions for the validity of taking pictures, and then the formal conditions for its validity, according to Algerian legislation.

### **3.1 Objective Conditions for the Validity of Taking Pictures**

Several objective conditions are required for the validity of taking pictures, including obtaining permission or authorization from the competent judge, ensuring that the authorized person or delegate to perform the procedure originates from the designated judicial police officers, who specify the crime scene and justify the necessity of photographing to reveal the truth, ensuring the preservation of privacy, professional confidentiality, and defense rights.

### **3.2 Securing Approval or Authorization from a Qualified Judge**

The legislature confined the act of photography to necessitating approval from the public prosecutor during the investigative phase or a permit from the authorized investigating judge during the judicial inquiry stage.

It is required that this permission or license, depending on the situation, be in writing with clear statements, including all the elements that allow the judicial police officer to identify the individuals whose pictures are to be taken, the intended locations, residential or otherwise, and the crime that justifies resorting to this measure. This permission or license must include all necessary information for its validity, including its date, the name and capacity of the issuing authority, and its stamp and signature, under penalty of nullity<sup>56</sup>. A police officer is not entitled to authorize or delegate another person to carry out this procedure, except for assigning any qualified employee of a public or private service, unit, or entity responsible for wired and wireless communications to handle the technical aspects of the picture operations.

### **3.3 Judicial Police Officers as the Bearers of Authorization or Licenses**

As per the Code of Criminal Procedure's Article 65 bis, the person permitted or licensed to take pictures must be officers of the judicial police who are qualified, local, and personal. An officer who is not a judicial police officer cannot authorize or delegate the photo-taking responsibility to another individual in the absence of judicial police status. The procedure must be executed personally by the authorized or licensed officer, within his direct view. As mentioned earlier, he can enlist the help of others.

### **3.4 Giving the Address of the Crime for Taking Pictures**

The danger associated with capturing pictures makes it impractical to do so in all crimes. Instead, it should be related to a specific offense listed in a special statute, or to one of the crimes listed in Article 65 repeated 5 of the law. According to Article 65 repeated 7, the first paragraph, "The authorization mentioned in Article 65 repeated 5 above must include... the crime justifying resorting to these measures." This text is formulated in the form of necessity, which renders any authorization or permission to capture pictures invalid if it does not specify the crime as the subject of the procedure. Such invalid authorization or permission cannot be relied upon in criminal evidence, in accordance with the theory of substantive nullity. It is important to note that the legislator limited the use of special procedures to cases of apprehension or preliminary investigation of serious crimes only<sup>57</sup>. Furthermore, if another crime is discovered incidentally during the procedures, not covered by the initial authorization or permission, this does not invalidate the incidental procedures (Article 65 repeated 6, paragraph 2).

### **3.5 Utility of Pictures in Revealing the Truth**

The lawmaker connected the procedures for investigative and judicial inquiries to the essential requirement of probing and commencing judicial investigations into specific crimes as stipulated by law. The issuance of authorization or licensing for taking pictures is only permissible in cases of extreme necessity. The legislator did not specify these cases or provide examples, leaving their assessment to the competent judge, according to the circumstances of each crime, its importance, severity, difficulty of detection, and the need to gather information on it. This evaluation is monitored by the appropriate court<sup>58</sup>. It is important to note that the legislator did not require substantial and coherent evidence to authorize the photographing in a specific location. It suffices that it serves the purpose of revealing the truth<sup>59</sup> and that traditional investigation channels have failed to Reveal the truth about it. The qualified judge is responsible for evaluating the justified benefit and urgent necessity of taking the action Its significance in uncovering the truth, and whether identifying the crime's perpetrators is impossible or difficult to achieve through another means<sup>60</sup>, he must adhere to this necessity<sup>61</sup>. This constitutes an exception to the sanctity of individuals' private lives.

### **3.6 Obligation to Respect Confidentiality and Professional Secrecy**

Confidentiality in investigation and Questioning must be conducted in accordance with Article 11 of the Code of Criminal Procedure to ensure identifying the true offender and preventing their escape from punishment. It is strictly prohibited to inform the suspect or accused or any other person of this procedure, and it is forbidden to Reveal the details of the technical arrangements report, the entry log, the call and conversation recordings, the copy report, and the

description report to anyone. This is stated in Article 10 of Order No. 21-09, which prohibits anyone from publishing or disclosing investigation or judicial interrogation reports or allowing anyone without authority to possess them, with exceptions as provided for in the Code of Criminal Procedure. Additionally, professional secrecy as stipulated in Article 45 must be maintained. This pertains to the details given to the individual in charge of photography while carrying out their duties, with all necessary measures taken to ensure its respect<sup>62</sup>. Violating confidentiality or professional secrecy is punishable by the penalties specified in Article 32 of Order No. 21-09<sup>63</sup>. Although the right to defense is protected constitutionally and legally and prohibits interference with it, the legislator did not establish specific conditions for taking pictures between the lawyer and the accused. These procedures are subject to the standard procedures specified in the Code of Criminal Procedure, similar to those for judges, except for the requirement to respect the judicial privilege for judges.

#### **4. Formal Requirements for the Validity of Taking Pictures**

The formal requirements for the validity of taking pictures consist of obtaining a written authorization or license from the competent judge, specifying the aspects enabling the identification of individuals and locations targeted, setting the timeframe for taking the photographs, and drafting a report on the technical setup for the photography along with a descriptive report of the captured images.

##### **4.1 Issuance of a Written Authorization or License from the Competent Judge**

Among the most crucial statutory prerequisites for the legitimacy of adopting pictures is obtaining prior written authorization or license from the competent judge, allowing and authorizing this procedure, as long as this action may affect the public liberties of individuals<sup>64</sup>. It should be noted that the law does not specify a particular form for this authorization or license. The authorization or license allows entry into places whether intended for residence or otherwise, even if it is Beyond the designated times in Article 47, paragraph one of the Code of Criminal Procedure, entry is allowed at any hour, day or night, without the consent of the individuals who have rights to those places. The legislator did not explicitly stipulate from the competent judicial authority the necessity of demonstrating the real motivating Justifications for taking the photographs, despite the critical role of causation in safeguarding the rights of the individual against whom the authorization or license was granted, who can contest the validity of the authorization or license in the appropriate court<sup>65</sup>. All the legislator required is that the components enabling identification of the permit or license individuals whose pictures are required, the intended places whether residential or otherwise, the crime justifying this measure, and its duration.

Repetition 7 First Paragraph, Code of Criminal Procedure The authorization or license for taking Pictures must be necessary to reveal the truth, contrary to permissions or licenses for Eavesdropping, which must be issued in writing and justified under penalty of nullity<sup>66</sup>.

##### **4.2 Identifying Elements Allowing Identification of Persons and Places**

The authorization or license issued by the public prosecutor or the investigating judge, as the case may be, must specify the elements allowing identification of the intended individuals and places where technical arrangements will be made to capture images of the relevant persons. These places may be residential or non-residential, unlike taking pictures of people in a public place, which does not require prior authorization or license, as public places do not enjoy privacy, and entry into them is permitted.

##### **4.3 Specifying the Timeframe for Taking Pictures**

Article 65, repetition 7, paragraph one of the Code of Criminal Procedure states that, depending on the circumstances, a license or authorization must define how long a photograph can be taken for in order for it to be legitimate, which must be adhered to by the judicial police officers carrying out the procedure<sup>67</sup>. Article 65, repeated 7, paragraph 2, stipulates an original period of four (4) months as the maximum duration for this procedure, which must not be exceeded. Article 65, repeated 7, paragraph 2 also allows for the renewal of this period for another maximum period of four (4) months, meaning that renewal can occur multiple times. This allows the competent judge to renew the original period more than once if the investigation's criteria dictate that it is required, making sure that the renewal is predicated on the need to keep capturing photos in order to unearth the truth. The rationale behind establishing the time limit for photos is to prevent the arbitrary extension of the duration by the competent judge. The duration is primarily linked to achieving the purpose of resorting to this procedure, which is to reveal the truth<sup>68</sup>.



#### **4.4 The creation of the reports on the technical arrangements for taking the pictures and the descriptions of the images that were taken**

The judicial police officer is mandated by the legislation responsible for taking pictures to prepare a report during the setup of technical arrangements, with another report to be prepared for each photographing operation (Article 65 repeated 11, first paragraph of the Criminal Procedure Code<sup>69</sup>), specifying the dates and times for the commencement and completion of the operation (Article 65 repeated 9 of the Criminal Procedure Code). It is also required to describe the pictures that are useful in revealing the truth and related to the crime under investigation in a report that is filed in the case file (Article 65 repeated 10, the Criminal Procedure Code's first paragraph). One crucial assurance that attests to the reliability of the gathered data is the legislator's mandate that the activities carried out by the authorized or licensed officer be documented in a report and at the same time acts as a guarantee for the right of the person subject to these operations to defend themselves<sup>70</sup>. The reports prepared by the judicial police officers during their investigations are considered written Statements, in which the author chronicles the observed events, actions taken, and results achieved<sup>71</sup>. Consequently, the legislator insists on the prompt preparation of reports once the actions are completed, necessitating the report's owner to sign each page, note their capacity and the author of the report (Article 54 of the Criminal Procedure Code), and then promptly submit this report to the competent judge accompanied by a copy marked as a true copy along with the documents and items seized. The judge has complete discretion in assessing the evidential power of the photograph, to accept it in whole or in part, or to dismiss it, as they are the highest expert in this respect, best able to understand, assess, and interpret it correctly and accurately in the legal case. They have the ability to dismiss this evidence despite its definitive scientific nature if they find that its subject does not logically coincide with the incident's circumstances.

### **Conclusion**

In this piece, we spoke about the process of capturing images as one of the special and exceptional investigative measures for certain serious crimes. We outlined the jurisprudential, legislative, and judicial positions regarding the use of this modern mechanism during criminal investigations in Algeria, and we elucidated the objective and formal conditions mandated by the lawmaker for the legitimacy of this process and the use of data derived from it.

### **Results**

- To directly capture images of suspects or individuals accused of committing specific serious crimes as defined by law in a private location, authorization or approval from the Investigating Judge or Public Prosecutor, contingent on the situation. This is contrary to capturing images of individuals in public places, which does not require such authorization or permission.
- The legislator did not stipulate the necessity of sufficient and cohesive evidence for the possibility of capturing images of individuals in a private location, whether it relates to the investigative or preliminary judicial investigation stage. It suffices that they have utility in revealing the truth and that traditional investigative channels fail to uncover the truth about the crime and its perpetrators.
- The legislator did not explicitly require that the issuance of permission or authorization for capturing images, issued by the public prosecutor or investigating judge as per the circumstances, be explicitly justified and reasoned. Nevertheless, the permission or authorization must be warranted and function to safeguard and maintain people's rights and privacy.
- Exceptional and unique research techniques, such as taking pictures, are not permitted by the legislator except in cases of investigating crimes caught in the act (felonies and misdemeanors punishable by imprisonment or a more severe penalty) and specific serious crimes defined by law in Article 65, repeated 5. Resorting to these procedures for investigating crimes not caught in the act during the investigative stage (misdemeanors punishable by imprisonment or violations due to their lack of seriousness and danger) or for investigating crimes not permitted by law is not allowed, due to the danger these procedures pose to individuals' privacy.

### **Recommendations**

Through our study and in-depth exploration of the legality of taking pictures during criminal investigations in Algerian legislation we propose some recommendations:

- Regulating the provisions regarding image Recording data separately during the judicial investigation phase from the search and inquiry phase is essential. Despite the clear differences between the investigative and preliminary judicial inquiry stages, the legislator has consolidated them into one section.

- Explicitly stipulating that permission or authorization for image capture must be issued by the competent judge under penalty of invalidation, similar to the requirement for permission or authorization for wiretapping (Article 65 repeated 15).
- There is a necessity for the Algerian judiciary to intervene in determining the legal value of evidence obtained from image capture by the victim themselves or by others, without the authorization of authorized judicial police officers or those authorized by the competent judge.

<sup>1</sup>-Article 47 paragraph one of Presidential Decree No. 20-142, relating to the issuance of the constitutional amendment, Official Gazette, No. 82, 2020, p. 34.

<sup>2</sup>- Law No. 06-01, on the prevention and combating of corruption, Official Gazette, No. 14, 2006, p. 4.

<sup>3</sup>- This chapter was added pursuant to Article 14 of Law No. 06-22, supplementing Order No. 66-155, containing the Code of Criminal Procedure, Official Gazette No. 84, 2006, p. 4.

<sup>4</sup>- Al-Husseini Ammar Abbas, visual photography and its authority in criminal proof, Journal of the College of Law, Volume 14, Issue 1, 2014, pp. 25-89.

<sup>5</sup>- Ibrahim Mustafa Ahmed, Hassan Al-Zayat Hamed, Abdel Qader Muhammad, Ali Al-Najjar, Al-Mu'jam Al-Wasit , Misr Press, Egyptian Joint Stock Company, 1960, p. 530, Quoted by Ali Abdullah Nofal: Awni Khattab Khaled, The role of modern imaging devices in criminal proof, a comparative study, Al-Rafidain Law Journal, Volume 15, Issue 55, 2017, pp. 396-429.

<sup>6</sup>- Verse 8, Surah Al-Infitar.

<sup>7</sup>- Verse 3, Surah At-Taghabun.

<sup>8</sup>- Verse 6, Surah Al-Imran.

<sup>9</sup>- Verse 11, Surah Al-A'raf.

<sup>10</sup>- Al-Husseini Ammar Abbas, Op Cit.

<sup>11</sup>- Al-Habibi Walid, the Criminal Protection of the Right to the Image, Journal of Law and International Business, Issue 26, 2019, p. 16.

<sup>12</sup>- Mohammed, Mamdouh, Al-Muslemy, Khairy, The Liability Arising from Assault on the Right to the Image in Light of Modern Communication Means, Dar Al-Nahda Al-Arabia, Cairo, Egypt, p. 10.

<sup>13</sup>- Shahawi, Mohammed, The Criminal Protection of the Sanctity of Private Life, Dar Al-Nahda Al-Arabia, Cairo, Egypt, 2005, p. 201.

<sup>14</sup>- Sama Saqf al-Hayt, The Right to Images: A Purifier for the Right to Privacy or an Independent Right, Faculty of Law and Public Administration, Birzeit University, Palestine, 2017, pp. 1- 34.

<sup>15</sup>- Ali Abdullah, Noufel, Awuni Khattab Khaled, Op. Cit.

<sup>16</sup>- Majadi, Na'ima, The Criminal Protection of the Right to the Image, A Comparative Study, Journal of Legal and Research Studies, Volume 02, Issue 05, 2017, pp. 217-238.

<sup>17</sup>- Sama Saqf al-Hayt, Op. Cit.

<sup>18</sup>- Decision issued on 22/07/2010, file number 575980, Misdemeanors and Infractions Chamber, Supreme Court Journal, Issue 02, 2010, p.157.

<sup>19</sup>- Law No. 09-04, containing special rules for the prevention of crimes related to information and communication technologies and combating them, Official Gazette No. 16, 2009, p. 5.

<sup>20</sup>- Video surveillance organized by Presidential Decree No. 15-228, setting the general rules related to the organization and operation of the national video surveillance system, Official Gazette No. 45, 2015, p. 3. (According to Article 2 of this decree, the national video surveillance system is considered a technical tool for insight and anticipation, aimed at contributing to the fight against terrorism, prevention of criminal acts, protection of people and property, maintaining public order, controlling non-road traffic, inspecting traffic violations, securing sensitive buildings and sites, managing crisis situations and/or natural disasters or others, and according to Article 3 of the same decree, it supports and assists security and/or rescue human arrangements deployed in the field, in the areas specified in the aforementioned Article 2, improving their work level by providing them in real-time with news and information capable of preventing or effectively combating crimes and/or facilitating the identification and arrest of their perpetrators, and improving measures to maintain order and public security, giving more effectiveness to direct field operations through coordination and harmonization in interventions and minimizing losses and damages to the lowest level and maximizing rescue operations).

<sup>21</sup>- Mustafawi Abdelkader, Special Investigation and Prosecution Methods, Supreme Court Journal, Issue 02, 2009, p. 71.

<sup>22</sup>- Sami Al-Majoun Khulood, Proving the Crime of Adultery between Sharia and Law, the Arab Center for Security Studies and Training, Naif Arab University for Security Sciences, Riyadh, Saudi Arabia, 1st Edition, 1992, p. 149.

<sup>23</sup>- Al-Saeed, Kamel, In-depth Criminal Studies in Jurisprudence, Law and Comparative Judicature, Sound and Image and Their Role in Criminal Evidence, National Library Circle, Amman, Jordan, 2002, p. 182.

<sup>24</sup>- Ammar Abbas Al-Husseini, Op. Cit.

<sup>25</sup>- Maman Basma, The Legal Value of Sound and Image as Evidence in Criminal Proof, Journal of Rights and Political Sciences, Volume 2, Issue 2, 2015, pp. 170-183.

<sup>26</sup>- Molhq Jamila, Interception of Correspondence, Recording Sounds, and Capturing Images in Algerian Criminal Procedure Law, Journal of Communication, Volume 21, Issue 02, 2015, pp. 174-187.

<sup>27</sup>- Haziit Mohammed, *Principles of Criminal Procedures in Algerian Law in Light of Recent Amendments to Criminal Procedure Law and Judicial Precedents*, Dar Bilqis, Algeria, 2022, p. 173.

<sup>28</sup>- According to Article 100 of the draft law containing the Algerian Code of Criminal Procedure presented to the Algerian Parliament for discussion and voting, crimes related to capturing images include: crimes caught in the act, intentional crimes, drug-related crimes, crimes related to psychotropic substances, transnational organized crime, crimes related to information and communication technology, money laundering crimes, terrorism, crimes related to legislation governing currency exchange and movement of funds to and from abroad, corruption crimes, smuggling crimes, human trafficking crimes, trafficking in persons and organs, migrant smuggling crimes, and crimes of kidnapping. This information was obtained from the website of the Algerian Parliament, See:

[http://www.majliselouma.dz/images/pdf/nossousse/Textes\\_juin23/loi\\_procedure\\_penale\\_fr.pdf](http://www.majliselouma.dz/images/pdf/nossousse/Textes_juin23/loi_procedure_penale_fr.pdf) (02/04/2024, at 22:00).

<sup>29</sup>- Article 65 bis 5 of the Algerian Code of Criminal Procedure stipulates that "if the necessities of investigation into the crime caught in the act or the preliminary investigation require..." This means that photographing is not permitted by the public prosecutor during the investigation and evidence collection stage, except in cases of catching the crime in the act, or investigating crimes specified by law, and the crime caught in the act according to Articles 41 and 55 of the Algerian Code of Criminal Procedure, either being a felony or a misdemeanor punishable by imprisonment or a more severe penalty. Therefore, misdemeanors punishable by fines and violations in general, for which the legislator did not specify catching them in the act due to their insignificance and triviality, do not have the importance and danger that justify violating the sanctity of private life.

<sup>30</sup>- Order No. 05-06, concerning the amended and supplemented measures to combat smuggling, Official Gazette No. 59, 2005, p. 5.

<sup>31</sup>- Order No. 20-03, concerning the prevention and combating of neighborhood gangs, Official Gazette No. 51, 2020, p. 5

<sup>32</sup>- Law No. 20-15, concerning the prevention and combating of kidnapping crimes, Official Gazette No. 45, 2021, p. 9.

<sup>33</sup>- Order No. 21-09, concerning the prevention of information and document protection, Official Gazette No. 45, 2021, p. 9.

<sup>34</sup>- Law No. 24-01, concerning the fight against forgery and the use of forged documents, Official Gazette No. 15, 2024, p. 4.

<sup>35</sup>- There is no dispute that photographing in a private place is prohibited and impermissible when done during preventive surveillance before the commission of the crime and without permission. This action constitutes a clear violation of the individual's right to the sanctity of their home and privacy, which is legally rejected, especially when it infringes on the constitutionally protected human life. Such photography should not be carried out by a judicial police officer, as it violates human rights in their private life, even if the facts to be revealed fall under the penal law. It is equitable for the cameras to be placed in the private place or remotely in a public place. The Court of Misdemeanors in "Blow," France, came to this conclusion.

<sup>36</sup>- Law No. 24-01, concerning the fight against forgery and the use of forged documents, Official Gazette No. 15, 2024, p. 4.

<sup>37</sup>- There is no dispute that photographing in a private place is prohibited and impermissible when done during preventive surveillance before the commission of the crime and without permission. This action constitutes a clear violation of the individual's right to the sanctity of their home and privacy, which is legally rejected, especially when it infringes on the constitutionally protected human life. Such photography should not be carried out by a judicial police officer, as it violates human rights in their private life, even if the facts to be revealed fall under the penal law. It is equitable for the cameras to be placed in the private place or remotely in a public place. The Court of Misdemeanors in "Blow," France, came to this conclusion. See: Abdelkader, Noufel; Khattab, Khalid, Op. Cit.

<sup>38</sup>- Ibid.

<sup>39</sup>- Bin Madi Al-Huwaigal, *Human Rights and Security Procedures*, Naif Arab University for Security Sciences, 1st Ed, Riyadh, Saudi Arabia, 2006, p. 145.

<sup>40</sup>- Marwan Mohammed, *The System of Evidence in Criminal Provisions in Algerian Positive Law*, University Publications Office, Algeria, Vol. 2, 1999, p. 473.

<sup>41</sup>- Al-Husseini, Ammar Abbas, Op. Cit.

<sup>42</sup>- Al-Budur Jamal Mahmoud, *Scientific and Technological Methods and Their Role in Criminal Evidence*, Scientific Symposium: Legal and Juridical Aspects of Using Modern Scientific Means in Criminal Investigation, Center for Studies and Research, Department of Scientific Symposia and Meetings, Naif Arab University for Security Sciences, Riyadh, Saudi Arabia, 2007, p. 56.

<sup>43</sup>- Al-Husseini, Ammar Abbas, Op. Cit.

<sup>44</sup>- Bin Muhammad Bin Mustafa Al-Mazraa, Abdul Latif, *Procedural Criminal Protection of Digital Privacy - Recording Phone Calls and Remote Communications as a Model - Comparative Study*, Journal of Al-Zaytoonah University of Jordan for Legal Studies, Vol. 3, Issue 2, 2022, pp. 22-35.

<sup>45</sup>- Ammara Fawzi, *Interception of Correspondence, Recording of Voices, Photography, and Leakage as Investigative Procedures in Criminal Provisions*, Journal of Humanities Sciences, 2010, pp. 235-254.

<sup>46</sup>- Abdelkader Noufel, Khattab Khalid, Op. Cit.

<sup>47</sup>- Ibid.

<sup>48</sup>- Al-Husseini Ammar Abbas, Op. Cit.

<sup>49</sup>- Ibid.

<sup>50</sup>- Bin Muhammad Bin Mustafa Al-Mazraa Abdul Latif, Op. Cit.

<sup>51</sup>- Ali Abdullah Noufel, Aouni Khattab Khalid, Op. Cit.

It should be noted that the signature is the only document witnessing the issuance of permission or authorization by the competent legal authority.

<sup>52</sup>- Decision issued on 06/24/2009, File No. 443709, Misdemeanors and Violations Chamber, Supreme Court Journal, Issue Two, 2010, p. 336.

<sup>53</sup>- Decision issued on 02/27/2000, File No. 228139, Misdemeanors and Violations Chamber, Supreme Court Journal, Issue Two, 2000, p. 224. See also Decision issued on 03/27/2000, File No. 240085, Misdemeanors and Violations Chamber, Court Journal. Supreme Court, Special Issue Part 2, 2002, p. 149, and the decision was issued on 02/27/2000, File No. 222960, Misdemeanors and Violations Chamber, Supreme Court Journal, Special Issue Part 2, 2002, p. 152.

<sup>54</sup>- Molhq Jamila, Op. Cit.

<sup>55</sup>- Al-Husseini Ammar Abbas, Op. Cit.

<sup>56</sup>- Ait Mouloud Samia, Guarantees established for the legality of intercepting correspondence, recording votes, and taking photographs in economic crimes, Journal of the Critical Journal of Law and Political Science, Volume 10, Issue 02, 2015, pp. 330-360.

We point out that the signature is the only document that attests to the issuance of the permission or license by the person from whom it was issued in a manner considered legally.

<sup>57</sup>- Molhq Jamila, Op. Cit.

<sup>58</sup>- Al-Qahouji, Ali Abdelkader, Explanation of the Law of Criminal Procedure Principles (A Comparative Study), Volume Two, Halabi Legal Publications, Lebanon, 2002, p. 283.

<sup>59</sup>- Driyad, Malika, Previous Reference, pp. 154-155.

<sup>60</sup>- Al-Kharsha Mohammed Amin, Legitimacy of Audio and Visual Evidence in Criminal Proof (A Comparative Study), PhD Thesis, Ain Shams University, Egypt, published by Dar Al-Thaqafa for Publishing and Distribution, Jordan, 1st edition, 2011, pp. 86-87.

<sup>61</sup>- The necessity is therefore linked to the interest of the procedures in revealing the truth and uncovering the crime, and that ordinary research methods and traditional investigation channels have failed to reveal the truth.

<sup>62</sup>- Driyad Malika, Op. Cit, p. 160. It should be noted that Article 45, paragraphs 3 and 4, CPC, require consideration of professional secrecy during the inspection of places occupied by a person legally bound to maintain professional secrecy, and it is necessary to take all necessary measures in advance to ensure respect for that secrecy during the inspection and seizure of objects and documents.

<sup>63</sup>- Article 32 of Order No. 21-09 states, "Anyone who publishes investigation reports and / or judicial investigation documents or reveals their content or enables someone without authority to possess them shall be punished with imprisonment from three (3) to five (5) years and a fine of 300,000 DZD to 500,000 DZD." Article 47 of the same order states that "Attempting to commit the offenses stipulated in this order shall be punished with the penalties prescribed for the completed crime." It should be noted that disclosing the secrecy of investigation and interrogation was subject to imprisonment from one (01) to six (06) months and a fine of 500 to 5,000 DZD as stipulated in Algerian Law No. 301. Article 46 CPC stipulates that "Anyone who discloses a document resulting from an inspection or is informed of it by a person without legal authority to access it and without the permission of the accused or his rights holders or the person in possession of the document or the recipient unless the necessities of the investigation require otherwise shall be punished with imprisonment from two (02) months to two (02) years and a fine ranging from 2,000 to 20,000 DZD," Previous Reference.

<sup>64</sup>- Ash-Shahawi Qadri Abdul Fattah, The Guidelines of Police Authority in Egyptian and Comparative Procedural Legislation, Al-Ma'arif Establishment, Alexandria, Egypt, 1st edition, 1999, p. 108.

<sup>65</sup>- The non-obligatory nature of obtaining permission for taking photographs is considered a legislative oversight that must be rectified. Therefore, we propose explicitly stipulating the requirement for obtaining permission or a license for taking photographs under penalty of invalidity, to avoid any legal complications.

<sup>66</sup>- Ali Jamal, Rights of Suspects When Resorting to Special Investigation and Inquiry Procedures Journal of Legal Studies, Volume 2, Issue 1, 2016, pp. 175-186.

<sup>67</sup>- Ait Mouloud, Samia, Op. Cit.

<sup>68</sup>- Molhq Jamila, Op. Cit.

<sup>69</sup>- Molhq Jamila, Op. Cit.

<sup>70</sup>- Ait Mouloud, Samia, Op. Cit.

<sup>71</sup>- Ibid.