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## The possibility of submitting correspondence involving the privacy of litigants to the judiciary

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### Abstract

The law has not failed to protect the human being and maintain its personality and prosperity and always intervened in the appropriate and appropriate to achieve this goal, and the comparative law is keen to confront this problem each according to the origins of the system, and strong protection of the right to privacy achieved through the development of effective means of protection, The most important of these are preventive measures aimed at preventing or preventing attacks. The protection of privacy must be a goal of the society sought by its various means. Finally, the family and the houses of science must educate people to respect for private life.

### Introduction

This problem appeared in light of the principle of inviolability and confidentiality of correspondence. Confidentiality of correspondence requires that whoever has a correspondence under his control that contains the secrets or privacy of others, , He must abstain from disclosing its content<sup>(1)</sup>: The human being feels the need to preserve his privacy, and this human need has become a social necessity where the penalty is inflicted on those who violate confidentiality and privacy. Infringement of the right to privacy may occur by violating the sanctity of correspondence, when the correspondence includes facts or incidents related to the private life of the opponents. The message may be a repository of human privacy.

The general rule is that if the letter contains private information, the person to whom he may disclose these privacy may not disclose these privacy only after obtaining the permission of the concerned. The addressee is considered the owner of the letter, but he is obliged to preserve the privacy he has received that he has not been authorized to disclose. If the message is in the hands of others, i.e. the one who is not sent or sent to him, then it is not permissible for him to publish what came out of the letter he obtained by legitimate means only after obtaining the consent of those who are concerned with the privacy, whether he is the sender or the receiver<sup>(2)</sup> of the letter.

This is with regard to the disclosure of the privacy contained in the letter, other than the case of being presented as evidence before the courts. The problem arises to see if these rules apply if the letter is presented as evidence before the judiciary, so is disclosure of privacy before the judiciary subject to the same rules or are there special rules where the need for the right to evidence and to assist justice appears. Article 10/2 of the French Civil Code issued on June 5, 1972 states that every person must cooperate with justice in order to reveal the truth.

The judiciary in France has undergone an important development in this area. For a long period of time, it has been applying the rule of maintaining the right to confidentiality or privacy, so it is not permissible to provide the judiciary with a letter containing a secret from the sender's secrets. The judiciary then began to take a different position in the field of proof of divorce, sometimes it is difficult to prove the case without disclosing the privacy of each of the spouses, because the relationship between them is in itself a source of many information that falls within the scope of private life.

We will study this topic in three demands as follows: The first requirement is the right of each of the spouses to submit private correspondence exchanged between him and the other spouse to prove his claim before the court. The second requirement is the right of each of the spouses to present the other spouse's private correspondence with others to prove his claim before the courts. The third requirement is the extent to which private correspondence may be submitted to the judiciary other than in divorce cases.

The first requirement is the right of both spouses to provide private correspondence exchanged between him and the other spouse to prove his claim before the courts.

If we applied the general rules, one of the spouses could not submit a letter he received from the other spouse to prove the divorce claim or to pay the other spouse's claims. The other spouse, the sender, would naturally object and would not agree to provide such a letter in the area of proof. In this case, however, the judiciary has overruled the right to prove the right to privacy. But the judiciary prevailed in this case the right to prove the right to privacy. One of the spouses may submit the letter he received from the other spouse to prove what he claims in the

divorce or physical separation lawsuit. Rather, what is contained in the letter itself may be considered a reason justifying the request for divorce, as if it involves severe abuse of the addressee, the other spouse<sup>(1)</sup>.

It seems that Egyptian law is taking this direction. Article 67 of the Evidence Law states that ((It is not permissible for one of the spouses to disclose, without the consent of the other, what he communicated to him during the marriage, even after their separation, except in the case of a lawsuit from one of them against the other and a case is filed against one of them due to a felony or misdemeanor that occurred from him against the other.)).

If one of the spouses is not permitted to disclose before the courts the secrets of the other spouse as a rule, then this rule also applies in the area of privacy right. It is not permissible for a person to disclose the privacy of others, even if he is a partner in these privacy.

We believe that the inappropriateness of disclosure of privacy or confidentiality is not only related to what one spouse communicates to the other. Rather, it should be understood as including everything that one of the spouses knows about the other because of the marital bond, and the text not only addresses what the husband knows of the other spouse's secrets, but the phrase is general as it relates to the disclosure of what he was informed of, and then also includes privacy.

But the text excludes from this rule in the event that a lawsuit is filed by one of them against the other. Hence, this phrase broadens what the French judiciary has settled on, as it allows disclosure in the event of a divorce lawsuit, while the Egyptian text allows for disclosure in the event of any lawsuit being filed. Hence, it is permissible for the wife, in Egypt, to disclose the financial condition of her husband when filing an alimony lawsuit against her husband or her divorce it is permissible for one of the spouses to submit the correspondence under his possession related to the privacy of the other as long as there is a case between them. And that is when the evidence was produced in this lawsuit.

Hence, the Egyptian legislator expressly requests the right to prove the right to privacy, even in the relationship between spouses.

The second requirement is the right of the spouse to provide private correspondence to the other spouse with others to prove his claim before the courts.

This issue went through an important development in French law, in which the judiciary played an important and prominent role. And we study this requirement in two sections:

**Section 1: The stages of the development of the French judiciary and the conditions it set for the use of correspondence.**

**Section 2: The conditions of the legality of obtaining the letter and disclosing its contents.**

## **The first section of the stages of the development of the French judiciary**

The development of the French judiciary in this area is linked to the position taken by the legislator in the area of the relationship between husband and wife. Until 1938, the wife was subject to marital authority, and therefore the position of the judiciary was in line with this situation. In 1938, this authority was abolished, but the husband remained regarded as the head of the family and in 1970 the legislator created the so-called parental authority and the family administration became a collective procedure between husband and wife, and the French judiciary therefore evolved to face the new circumstances. We examine the following stages of this development: **First: Judicial opinion in the previous period. in the period prior to the issuance of the Law of February 8, 1938.**

Since only a husband has the marital power to confront his wife, the judiciary has distinguished between the husband's status and the wife's status in the field of monitoring correspondence.

**The marital authority entitles the husband to the right to monitor his wife's correspondence** <sup>(1)</sup>. The husband had the right to seize the wife's letters and to open them and see them even before the wife received them, even to execute them and tear them apart, and not to be subject to criminal penalties that punish those who violate the sanctity of correspondence between sending them and even the moment they are received by the addressee. For the husband, the wife's correspondence was considered to be exactly his correspondence and he could therefore see it and submit it to the judiciary. Some courts have even argued that it is permissible for a husband to seize his wife's correspondence by force, and he may obtain it by purchasing it from the addressee. The matrimonial authority allows the investigation and investigation of his wife's correspondence to obtain evidence that allows him to prove an assault that affects his honor and dignity <sup>(2)</sup>.

The judiciary was at first satisfied with the requirement that the husband had not obtained the wife's letters through a method prohibited by law and punishable by law <sup>(3)</sup>.

The cassation court developed later so that for the correspondence to be counted, the husband must have obtained it in a way that does not involve abuse or abuse, so the method must be legitimate <sup>(4)</sup>.

The wife did not have the right to monitor the husband's correspondence. However, the French judiciary granted the wife the right to present the husband's correspondence before the judiciary if these correspondence took place in the wife's possession without the slightest deception or abuse or any unlawful act on her part <sup>(5)</sup>.

The judiciary was not based in that on the rules on marital power because those rules only give oversight to the husband. Rather, it refers to the general rules in submitting correspondence for proof before the courts, i.e. correspondence can be submitted before the courts as long

as there is agreement or no objection on the part of the sender and the addressee. Accordingly, correspondence was allowed to be submitted to the courts if the husband had authorized his wife to receive and open his correspondence, or when there was implicit permission on the part of the husband.

By examining these secrets and the court extracts them from the circumstances of the case, or if the husband left his correspondence in a place where the wife touched, as if he left it on a table in the house in front of the wife (). The letter may not be submitted if the sender objects.

After that, the French judiciary abandoned that narrow idea, expanding the scope of the wife's right to present the husband's correspondence before the judiciary, and it established that on grounds different from what it had indicated before. The court ruled that since the right to confidentiality or privacy of letters was not an absolute right, it could be prejudiced when there was a divorce claim before the courts, and the wife could present the husband's letters as evidence to prove what she claimed, provided that she had obtained them in a manner that did not involve circumvention or abuse in any legitimate way <sup>(2)</sup>

The basis for this is not the marital authority, not the general rules for using letters in evidence, but rather what is required by the circumstances of the divorce case and the necessity for each spouse to take into account the rights arising from marriage.

#### **THE POSITION OF THE JUDICIARY AFTER THE PROMULGATION OF THE LAW OF FEBRUARY 18, 1938 AND THE LAW OF SEPTEMBER 22, 1942:**

In 1938, the marital authority was abolished, and the right of control enjoyed by the husband in the face of his wife's correspondence was abolished, despite the fact that he was the head of the family.

And the opinion settled that the head of the family does not have the authority to confront his wife, and therefore this quality does not allow him to monitor his wife's correspondence

Hence, the husband who seizes the correspondence directed to his wife commits the crime of infringing upon the freedom of correspondence and is subject to criminal punishment <sup>(4)</sup>.

But what is the effect of the abolition of marital power and equality between spouses, therefore, on the possibility of presenting correspondence before the courts? Has the restriction of the right to confidentiality of correspondence ended with considerations of the right to evidence, or is this exception still in place? The French Court of Cassation has established that there is a reciprocal right of control of each spouse's correspondence and therefore it may be submitted for proof before the courts, especially if there are real doubts about marital conduct, and it should be noted that there is equality between the rights of the spouses in this area. In any case, the correspondence must be

obtained in a manner free from fraud, abuse or illegality<sup>(1)</sup> However, it should be noted that it is not the right of any spouse to seize the other's letter and open it without his permission. If he leaves it open, for example in a visible place in the house, then the other husband has the right to see it. That is the right to love the poll. Censorship is an exception to the principle of confidentiality of private correspondence, but it is not an exception to the principle of inviolability of correspondence, which is one of the principles within the scope of common law. This right to mutual control is justified in the restrictions imposed by the duties of marriage on the individual freedom of each spouse. This right of control works to reconcile the protection of marital ties with respect for the personality and dignity of each spouse. Cohabitation between spouses is a right and an obligation, and such cohabitation arising from marriage is the basis of the right to control. Cohabitation not only gives each of the spouses the right to enter the dwelling, but also the right to curiosity in relation to what is inside the marital home. The idea of marriage by virtue of being a bond between two people, the necessities of married life necessitate restricting the individual freedom of each of the spouses. And since the right to mutual control finds its basis in the marital bond, this right is not established only before the divorce lawsuit, but rather remains in place during the consideration of the divorce case, as the marital bond remains present throughout the period of the case. Indeed, this right may remain in place after the divorce, in relation to everything related to the ties arising from marriage, such as issues related to child custody<sup>(1)</sup>. After the issuance of Article 9 of the French Civil Code, the courts confirmed the possibility of one of the spouses submitting the exchange of letters between the other spouse and others and to prove his claim. The courts made it clear that a person has the right to present the message even if it includes the privacy of one of the spouses as long as there is a legitimate interest for him in submitting it. It is in the legitimate interest that submitting the letter would prove his claim<sup>(2)</sup>.

In fact, a recent amendment of the French Civil Code legalized what the judiciary took place, both in principle and on the restrictions it responds to. Article 259, first paragraph, issued on July 11, 1975 ((that one of the spouses cannot present to the courts the correspondence exchanged between the husband and the other and others if he had obtained it through force or fraud) ... and it is understood from this in the sense of the violation that it is permissible Submitting these correspondences to the judiciary if they were obtained without force or fraud<sup>(3)</sup>.

From this development, from the sum of the previous texts referred to, it is concluded that the husband's right to prove overcomes the right to privacy, provided that the letter has been obtained in a legitimate manner, and that the disclosure of privacy is legitimate. But what is the meaning of this limitation and when the disclosure is legitimate and the message is obtained is legitimate. This is clear to us by the judicial application in the area of restrictions on the right of each spouse to censor each other's correspondence.

## **Section 2: The legality of obtaining the letter and disclosing its contents**

The judiciary has made sure that the right to control is not absolute. The government's decision to re-apply the law to the courts is a matter of law and order. In fact, the phrase "legitimately obtaining speech" is flexible and shrouded in a lot of ambiguity. The divorce case is a declared war between spouses, and the requirement that the legal access to the letter reminds us of the problem of legitimate and illegal weapons used in war. Examining the position of the judiciary on this issue would shed light on the idea of obtaining the law and correctness of the other spouse's correspondence. It is considered legitimate when it was accidental, without searching or inspecting, and where there is a place that each of the spouses has the right to freely knock in the home. As if the letter was left on a table in the middle of the house or in a cupboard for the spouses, each of them has the right to open it, or a letter received by the husband and torn it up and thrown in the trash, or in the husband's clothes when the wife arranges the house or sends clothes for cleaning <sup>(1)</sup>

Or even finding the letter on the occasion of one of the spouses exercising a legitimate right such as reading letters addressed to his minor children. It is permissible for the husband to submit letters from the wife to her minor son <sup>(2)</sup>

It is illegal to open the wife's closet with an artificial key to seize the letter. The husband receives a letter from the wife in return for payment of a sum of money to the addressee or one of his followers. And take the letter from the hand of the servant who was assigned to go to the mail to send it (1).

With regard to voluntary delivery by the third party to whom the letter is sent to one of the spouses, it is considered legitimate (2) but it is stipulated that the correspondence, which delivers the letter to the other spouse, shall not have violated his obligations towards the husband who wrote to him. A husband who asks the correspondence to hand over the letter or accepts his receipt may be subject to refusal to adopt the letter as proof (3).

The Court of Cassation ruled against the rejection of the letter submitted by the husband in the divorce claim on the grounds that it was sent from the wife to her friend and that the wife passes through the friend with many of her privacy. If a friend delivers the letter to the husband, she may have used the letter illegally and she should have kept the secrets of her friend, who told her what was in her mind (4).

The judiciary in that area has the discretionary power to know whether the correspondent with the husband abused the letter, as the judiciary accustomed to the letter submitted by the wife, which is a letter from the husband to the father of his wife requesting that he direct the attention of his daughter to the mistakes committed by the wife, so the father delivered The letter to his daughter was not considered illegal, and therefore the speech was used in the field of proof (5).

And access is considered legitimate if one of the spouses has authorized the other to see his own messages, whether explicitly or implicitly (6).

It is considered illegal to forcibly seize the correspondence of the other spouse despite the opposition of the other spouse.

It is considered unlawful for the husband to open the wife's letters if they were delivered to him or received them by mistake, as if the wife was traveling or not in the marital home (1).

The judiciary, in its assessment, allowing the husband to present the letter as a means of proof may be affected by some other considerations that are not directly related to the means of obtaining the message itself.

The judiciary takes into account the nature of the facts that one of the spouse's claims can prove through the letter submitted. The judiciary is lenient in accepting the letter, i.e. the right to prove the right to privacy should prevail when one of the spouses is intended to prove the other's own state's own state. The judiciary is keen to allow adultery to be proven in all ways and by the most means. It is not strict in the search for the legitimacy of the means of obtaining the message when it is to prove the fall of adultery (2).

The judiciary also takes into account the confidentiality and privacy of the information and facts contained in the letter submitted. The more confidential and specific the information and facts

Contained in the letter provided, the more the judiciary will investigate the means of obtaining the message and the need for it to be legitimate. He refused to adopt the letter obtained by the husband from his wife's girlfriend, who had to keep her friend's secrets, which could only be mentioned to a close friend. Also, it is not necessary to use the message that is delivered from others to one of the spouses in order to take revenge on the other party (3).

Finally, the judiciary considers the extent of the doubts that arise about the behavior of the other party. Whenever the behavior of one of the spouses is suspicious, the other party has the right to exercise tight control over his correspondence in order to clarify the truth of his doubts (4).

It must be noted that the infringement of the right to privacy is considered unlawful if it involves an affront to human dignity (5).

With regard to the burden of proof about the means of obtaining a letter, the spouse who wants to exclude the message as a means of proof must establish evidence that it was obtained illegally. The basic principle is that there is evidence of the legality of obtaining the message in favor of those who present it in his interest before the judiciary (1).



On the one hand, this presumption confirms on the one hand the preponderance of the right to prove the right to privacy in the field of divorce proceedings, and on the other hand, it confirms the right of each of the spouses to control the correspondence of the other (2).

### **The third requirement**

#### **Is the extent to which private correspondence can be submitted to the courts other than divorce claims?**

And if the judiciary had long ago settled on giving precedence to the right to prove the right to privacy in divorce cases, but in other than this area it seemed strict. The judiciary initially refused to consider the letter submitted by a third party if this third party was other than the two spouses, and that was whether the letter was intended to prove legal action or a material act. He also refused to count the letter in a compensation claim for what the message contained in defamation of others (1).

However, the judiciary was keen in some cases related to family matters, even if they were not related to the divorce lawsuit, to count the private correspondence submitted by others against the correspondents. So consider the letter submitted by the husband in a case of denial of filiation if the letter was exchanged between the wife and the brother of the real father of the child. This speech would prove the wife's fornication and thus the denial of filiation.

In the field of the lawsuit to prove the lineage of the child to his mother, the judiciary invoked the letter submitted by the child when it was exchanged between the mother and the breastfeeding woman, since this letter was issued in a matter related to the interest of the child. In the field of a girl's compensation case against the person who tempted her, the judiciary also attacked the reciprocal letter between this person and the doctor who supervised the delivery process, on the basis that such letters were written to deliver them to the girl (2).

It is noted that the judiciary has made sure to consider the letters submitted, taking into account the interest of the submitter in proving his right, but at the same time he did not declare an exception based on the rule of secrecy of correspondence. Rather, he tried very hard to justify accepting letters in the field of proof by not having a private or confidential character despite the fact that the circumstances of the case often break with the private nature of the correspondence. The judiciary used its discretionary power to determine the private or confidential nature of correspondence to take into account the right to evidence.

This judiciary is considered out of the judiciary's desire, or lack of conviction, to differentiate between proof in the divorce case and proof in other cases. The rule must be the same in both cases. If most of us have the right to prove the right to secrecy or privacy in the field of divorce, then there is no sense in not extending this to other cases even if there is no consent from third parties to present the message for

proof and if the judiciary does not explicitly disclose this, but by using its discretion it reaches To this result, it is always imperative that the message be obtained in some way (1).

And we can decide that the rule now in French law is the possibility of presenting the letter, which includes facts related to the private life of the judiciary as long as the one submitting it has a legitimate interest in submitting it. This rule is no longer limited to divorce cases (2). Rather, the judiciary no longer distinguishes between presenting the message by one of the correspondents or by others. The right to prove restricts the right to privacy, as a general Principle requiring that the letter be obtained in a legitimate manner, for the legitimate acquisition of the letter makes the disclosure of privacy legitimate. The right to prove the right to privacy for correspondence prevailed, since if the right to privacy had prevailed, it would have been difficult or impossible for the holder of the letter to prove his right in another way, i.e. that the primacy of the right to privacy would result in the sacrifice of the right to proof.

The primacy of the right to prove does not lead to the sacrifice of the right to privacy, but merely to restrict it, but rather a restriction necessitated by the principle of open court hearings. The publicity that comes from court hearings is much less than publicly through the press (3).

It should be noted that the hearings heard by divorce proceedings are heard in the advice room, which greatly reduces the importance of the exception to the right to privacy. The court also has the right to order the confidentiality of the hearing or to prevent the publication of what happened in the hearings. Thus, it is clear that the right to privacy is in conflict with the right to proof and the judiciary strives to clarify which is prevailing and in any circumstances and under what conditions. The right to privacy is absolutely not outweighed and the right to proof is not always and ever. The judiciary is keen to hold the issue in his hands so that he can achieve justice and give the appropriate solution in each case. We believe that such a course is better than insisting that one value prevails over the other absolutely, respecting the human being, or searching for and reaching the truth. The function of a judge, as long as we trust him, is to achieve some kind of harmonization of the values that prevail in society in the interest of the general good of the group<sup>(1)</sup>.

### **Conclusion:**

The confidentiality of correspondence requires the presence of the sender important secrets, especially to third parties, the origin of which is not disclosed in order to preserve the privacy of others, and the violation of the right to privacy can occur by the expiry of the sanctity of correspondence, when the correspondence contains facts or incidents related to the private life of the opponents, The rule is that if the message contains private information, then the addressee may not

disclose these privacy except after obtaining the permission of the person

Concerned, and the problem arises to indicate the extent to which this rule applies in the event that the message or information is presented as proof before the court. Is disclosure of privacy before the judiciary subject to the same the rules or there are special rules to resolve this conflict?

The judiciary in France has undergone an important development in this area, as it has been a long period of time applying the rule of maintaining the right to confidentiality or privacy, it is not permissible to submit to the judiciary a matter that contains a secret of the sender's secrets. Then, the judiciary began to take a different position in the field of proving the divorce case, and the researcher touched on the right of each of the spouses to present private correspondence between him and the other spouse to prove his case before the judiciary in a first demand, and the right of both spouses to submit private correspondence of the other spouse with others to prove his claim before Elimination.

The researcher went through the stages of development of the French judiciary in this regard, with an explanation of what are the legitimate conditions for obtaining the message and revealing its content. The researcher concluded the following results:

1. The right to privacy does not prevail in absolute terms, and the right to evidence does not always and always prevail.
2. The judiciary must hold the reins of the issue in his hand to achieve justice and give the appropriate solution in each case separately.

### **Summary:**

The law has not hesitated in protecting the human being and preserving his personality and prosperity, and it always intervenes in the appropriate and appropriate amount to achieve this goal, and the comparative law has been keen to confront this problem, each according to the principles of his system, the strong protection of the right to privacy is achieved by Establishing effective means for this protection, and the most important of these means are preventive measures aimed at preventing or preventing abuse, and protecting privacy must be a goal of society that it seeks through its various means, and finally the family and the role of knowledge must be characterized by educating people to respect Private life.

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