

Research Article

SUBSTANTIVE CRIMINAL PROTECTION FOR THE RIGHT TO IMAGE IN THE DIGITAL ERA UNDER UAE AND FRENCH LEGISLATION

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ABSTRACT

Background: *The right to image is considered one of the most important personal rights related to the person, simply because the image does recognise its owner from his or her peers, thus constituting a vital element of one's private life. Accordingly, legal protection of the right to image is highly required on both civil and criminal levels. There is no doubt that such a requirement can be attributed to the notable developments in the field of information technology, and what has been produced by digital devices and misused by people has led to the rapid spread of images in the virtual space, where any individuals have become subject to the violation of their private life. Based on this, the legal provisions of both Emirati and French legislators have adopted legal provisions that would ensure full and substantive criminal protection of the right to image, confirming the criminalisation of all forms of assault on this right, in addition to defining the controls and penalties that shall be applied against these attacks.*

Methods: *To thoroughly tackle our research issue and its consequences, we will employ a descriptive, analytical, and comparative method. This approach is structured to meticulously explore every aspect of the research subject, albeit succinctly, and integrate jurisprudential principles with current judicial precedents.*

Results and Conclusions: *The current research results show that comparative legislation lacks a precise definition concerning the violation of the right to image, thus leaving its interpretation to be determined by jurisprudence and the judiciary. In Emirati and French legal frameworks, this offence is not explicitly delineated but is rather encompassed within regulations safeguarding private life. The right to image is not absolute, with exceptions permitting capturing photographs for public interest. Protection of images is deemed essential within the context of private life rights. While UAE legislation mandates the use of devices for such*

violations, French law offers flexibility, allowing for various means of perpetration. Both legal systems stipulate that the act must occur in a private, unauthorised context and prohibit alterations to photographs without consent. Unlike UAE law, French legislation imposes penalties for the dissemination of sexually explicit images. Finally, the infringement upon the right to image is categorised as an intentional offence in both legal systems.

1 INTRODUCTION

It should be noted that human rights have undergone several stages of development until reaching the current stage, in which they have become an integrated, indivisible system. Among these rights is one's private life, which has been ensured by divine religions, national constitutions, and international agreements. Besides, criminal laws have been legislated to protect private life from attack or violation.

Developments in the field of information technology and digital devices have unquestionably facilitated the dissemination of images and photos across the virtual space, exposing individuals to potential violations of their privacy. As stated above, certain laws have been legislated for the protection of personal life. Nevertheless, these laws have come up with different concepts of this right that vary in determining the scope of criminal protection.

Due to the exploitation of technological development by some groups or individuals, a new pattern of assault on an image or photo copyright has emerged, such as blackmail, insulting, and defaming the image or photo owner. Thus, information technology and social media sites have become like a curse on the lives of those who would prefer to keep their private lives somehow confidential. Accordingly, Emirati legislation has been obliged to strengthen the protection of people's private lives, with special emphasis on the right to image, as this issue has been subject to increasing violations. As a matter of fact, the protection process of personal images or photos from any type of attack represents, indeed, a noble attempt to save the whole moral entity as defined by laws and religions.

1.1. Research Importance

Criminal protection of the right to image is deemed of great importance in our contemporary lives, as we live in a globalised world in which almost everything is open to everybody. Accordingly, any photo of any person in a private situation can be published on the Internet or via social media, regardless of the reasons behind such action. Yet there is no doubt that it would lead to uncovering one's private life, and thus, it might cause harm to that person's reputation and honour. Such a situation threatens both the individual and society; therefore, it is quite expected that the legislator will interfere to protect this right.

1.2. Research Problem

Our research problem is fundamentally driven by the imperative to scrutinise the robustness of penal provisions in preserving the right to image within the legal reteams of both Emirati and French legislations. Moreover, it is imperative to ascertain the adequacy of the penal provisions in criminalising violations and defining appropriate penalties for such transgressions. Additionally, a comprehensive understanding of the legislator's policy regarding the criminalisation of this type of violation is essential, whether within the traditional criminal law framework or in its modern manifestation aimed at combating rumours and electronic crimes in the UAE Anti-Rumors and Cybercrime Law (34) of 2021.

Yet, the aforementioned research problem can be succinctly encapsulated through a series of questions outlined as follows:

1. What constitutes the concept and nature of the right to image?
2. Is an individual's right to protect their photos absolute or subject to restrictions?
3. What are the limitations and controls surrounding the violation of the right to image?
4. What are the various dimensions of a violation of crimes against the right to image?
5. Does obtaining consent to take someone's photo imply approval for its publication?
6. If image protection is confined to private spaces, how does it apply to public ones?
7. How should we categorise crimes against the right to image – as intentional or unintentional?
8. What types of penalties are appropriate for violations against the right to image?

1.3. Research Plan

There are two primary sections to the current research. The first centres on the provisions related to criminalisation, while the second delves into the numerous penalties imposed by legislators on individuals who commit such crimes.

2 ASPECTS OF OFFENCES PERPETRATED AGAINST THE RIGHT TO IMAGE

It is pertinent to underscore that the elements of an offence against the right to image encompass, firstly, the crime's subject, represented by the photograph of an ordinary individual. Subsequently, consideration should be given to both its tangible and moral dimensions, guided by the stipulations outlined in Article 430 (2) of the UAE Crime and Penal Code, Article 44 of the UAE Anti-Rumors and Cybercrime Law and Article 226 (2) of the French Penal Code.

2.1. Subject of the Crime (Natural Person Photo)

The infringement upon the right to image is not legally categorised as a crime unless it pertains to a natural person. However, due to the absence of a specific legislative definition of the term “right to image”, jurisprudence and the judiciary have relied on a technical definition of this term, in which an image or a photo is defined as a representation of a person or thing, being engraved, sculptured, painted, photographed, or filmed, etc.¹

In accordance with the aforementioned definition, an image or photograph may depict an individual in a manner that allows for their unequivocal identification by others. However, some might claim that an image or a photo is an optical representation of a certain figure that could be something or someone.² In one option, an image or a photo reflects a person’s external form,³ expressing his emotions and feelings and translating the style he adopts or follows to some extent. The Italian jurist François Dini assumes that an image is a distinctive feature of one’s individuality and an external imprint of his or her ego.⁴ It could alternatively be defined as the fixation or depiction of human physical characteristics through light on any material substrate.⁵

In this context, an image is considered a proprietary object owned by its possessor, serving as a reflective representation of certain attributes of the individual in question. Based on this assumption, we believe that the owners have the right to protect their personal images or photos, i.e., they can be protected by criminal law, which prevents other people from sculpting, taking, or painting them by any means without the owner’s consent.⁶ This legal authority empowers individuals to initiate legal action against anyone capturing their images without consent, employing either conventional methods or information technology.

As an image or photograph serves as a manifestation of an individual’s personality, expressing their concealed feelings and emotions, any transgression against such an image should pertain exclusively to a natural person, namely, an individual of flesh and blood. Moreover, this individual is presumed to be in a private situation unintended for public observation. In other words, criminal protection would be restricted to an image or a photo

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- 1 Talal Abdul Hussein Al-Badrani and Issra Younis Hadi Al-Moulla, ‘Criminal Evidence in Cases of Assault on the Right to the Image’ (2023) 12 (45/2) *Journal of College of Law for Legal and Political Sciences* 165.
 - 2 Aladdin Abdullah Fawaz Al-Khasawna and Bashar Talal Al-Moumani, ‘The Legal System of the Photograph the Rights and Legal Protections: A Comparative Study on General Rules and Rules for the Protection of Intellectual Property Rights’ (2013) 53 *UAEU Law Journal* 213.
 - 3 Saeed Saad Abdul Salam, *Al-Wajeez on Freedom of the Press and Publishing Crimes* (Arab Renaissance 2007) 126.
 - 4 Reda Muhammad Othman Desouky, *Balancing between Freedom of the Press and the Sanctity of Private Life: A Comparative Study in Egypt and France* (Arab Renaissance 2009) 738.
 - 5 Kadhim Al-Sayed Attia, *Criminal Protection of the Accused Right to Privacy: A Comparative Study of Egyptian, French, American and English Laws* (Arab Renaissance 2007) 345.
 - 6 Saeed Jabur, *Photo Copyright* (Arab Renaissance sa) 24.

that belongs to a person only, where the crime occurs at the moment the picture is taken, regardless of the victim's situation – whether mundane or embarrassing. Moreover, the appearance of the individual in the photo, whether clothed, awake or asleep, is irrelevant. What is important is that the photo belongs to a natural person while being in a private situation, and it has been taken without their consent.

In addition to living people, violations of the right to image include dead people. This interpretation has been adopted by the French Court of Cassation in several decisions,⁷ in which photos taken of living or dead people are considered legally prohibited unless there is approval for such behaviour.⁸

Notably, the UAE legislator has confirmed in Article 44 (4) of the Anti-Rumors and Cybercrime Law that violation of the right to image shall extend to all people, including the dead and injured or victims of accidents and disasters unless approval is obtained from the concerned parties.⁹

Conversely, images depicting inanimate objects, animals, and natural scenes are explicitly excluded from the purview of this application. This exclusion persists irrespective of their importance or the potential harm arising from their portrayal, even if they fall within the ambit of intellectual property protection laws. For example, it is not considered a crime if a pet is photographed, transferred, or published without the prior consent of its owner. Nevertheless, civil liability might raise this issue with the related person having to be compensated, but this is another matter. Another example regards inanimate things, such as clothes, house decorations, or souvenirs, that their owners are not inclined to show publicly. If these things are photographed and pictures are published, this act cannot be considered a crime against the right to image.¹⁰

2.2. Tangible and Intangible Aspects of the Right to Image in UAE and French Criminal Laws

The commission of an offence against the right to an image requires the presence of two primary aspects: tangible and intangible.¹¹

7 See, *William Edenn Baronnet c/ Mac Neil Whistler* n°49.16 (Cour de Cassation Première Chambre Civile, 14 mars 1900) D.199-1-497; Cass crim 16 Ferrier 2010 [2020] AJ Penal 7/340; De pourvoi n 97-84.621 (Cour de Cassation Chambre criminelle, 20 octobre 1998) [1998] Bulletin criminel 264/765.

8 Tariq Siddiq Rasheed, *Protection of Personal Freedom in Criminal Law: A Comparative Analytical Study* (Al-Halabi Legal Pub 2015) 222.

9 Khaled Mohamed Al-Daqani, 'Criminal Protection of the Sanctity of the Right to Image within the Scope of Information Technology in Emirati Legislation: A Comparative Study' (2020) 1 Journal of Sharia and Legal Sciences 321.

10 Husam Al-Din Kamel Al-Ahwani, *Respect of Private Life: the Right to Privacy: A Comparative Study* (Arab Renaissance 1978) 76.

11 Ahmed Mohammed Atiya, 'The Essence of the Right to Image: Present Challenges and Future Prospects: A Comparative Study' (2020) 43 Helwan Rights Journal for Legal and Economic Studies 211.

2.2.1. Tangible Aspect

Emirati and French laws explicitly addressed violations of the right to image, outlining instances where such actions constitute criminal offences, considering the variations in provisions within both legal systems. These laws categorised various manifestations associated with the violation of the right to image, with examination focused on the UAE Crimes and Penalty Code of 2021, the UAE Anti-Rumors and Cybercrimes Law of 2021, and the French Penal Code of 1992.¹² Some manifestations are common across all three laws, while others are specific to individual legal frameworks. Common criminal behaviours in UAE and French laws include capturing, transmitting, recording, and broadcasting photographs, which will be further explored in subsequent paragraphs.

A. Common Manifestations of Criminal Behavior in UAE and French Criminal Laws

Common facets of criminal behaviour within the legal framework of both UAE and French law involve the acts of capturing photographs, transmitting, recording and broadcasting them. The subsequent sections will undertake a detailed exploration of these aspects.

- ***Capturing Photographs***

Engaging in capturing an individual's photos without obtaining explicit approval or consent and subsequently affixing or attaching this photograph to any medium or material is considered a criminal offence.¹³ Besides, it is argued that this behaviour shall have the features of a crime even if the perpetrator has failed to establish the photo by using sensitive chemical material.¹⁴ Furthermore, the crime cannot be negated despite the modifications that the perpetrator might make to the photo to delete or add certain features through modern techniques.¹⁵

Conversely, the commission of the crime does not transpire merely through surveillance, observation, or voyeuristic activities,¹⁶ such as discreetly peeping or observing an individual through a doorhole or an open window, even when the subject is in a compromising situation and wishes to remain unseen by others. Moreover, these circumstances fall beyond the scope of the crime against the right to the image, even if the perpetrators convey what

12 See, Federal Decree Law no (31) of 2021 'Promulgating the Crimes and Penalties Law' art 431-2 <<https://uaelegislation.gov.ae/en/legislations/1529>> accessed 22 December 2023; Federal Decree Law no (34) of 2021 'On Countering Rumors and Cybercrimes' art 44 <<https://uaelegislation.gov.ae/en/legislations/1526>> accessed 22 December 2023; French Penal Code of 1992, arts 226-2, 226-3-1 <https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719> accessed 22 December 2023.

13 Ali Ahmed Al-Zou'bi, *The Right to Privacy in Criminal Law: A Comparative Study* (Modern Book Foundation 2006) 113.

14 Mustafa Muhammad Musa, *Criminal Investigation into Electronic Crimes* (Police Press 2008) 117.

15 Heba Ahmed Hassanein, *Criminal Protection of Private Life Sanctity* (Arab Renaissance 2004) 467.

16 Raed SA Faqir, 'Digital Criminal Investigations in the Era of Artificial Intelligence: A Comprehensive Overview' (2023) 17(2) *International Journal of Cyber Criminology* 77.

they have witnessed to others, simply, as the act of seeing or watching is not considered a constituent element of this particular offence. Nevertheless, such conduct may be construed as indecent assault, and the individual committing it may face legal repercussions.

Similarly, the right to image is not violated when binoculars are employed to observe the private lives of others. Likewise, if an individual utilises advanced technological devices emitting rays, enabling them to discern activities transpiring behind walls, there is no substantiation for the aforementioned offence. In both instances, there is no evidence of the related crime since no image or photo has been affixed and later published and transferred to others.

- **Transmission of Photos**

The term “transmission of photos” refers to relocating an image or photograph from one location to another, irrespective of whether the new place is public or private. The paramount significance is that the person who receives the photo can distinctly discern all the features of the individual depicted in the photo.¹⁷ The preparation of the crime against the right to image occurs regardless of whether the same individual captured and transmitted the photograph or if two separate individuals were involved, one capturing the image and the other affecting its transfer. Under UAE law, both scenarios evolve into a violation crime. For instance, if an individual acquires an image of another individual with consent and subsequently disseminates it on social media sites, the whole process constitutes a criminal offence.¹⁸

Conversely, the tangible dimension of the crime against the right to image is non-existent when considering a scenario involving a painter or sculptor crafting a depiction of an individual in a private situation and subsequently disseminating it without the owner's consent, regardless of its accuracy. This exemption arises since the implement employed in creating the design is not deemed one of the instruments specified by the legislator for criminalising violations of image rights. This exemption is explicitly evident in Article 431/2 of the UAE Crimes and Penal Code, which stipulates that the image shall be transmitted “by a device of any type.”¹⁹ Therefore, we contend that legislative intervention is required to broaden the scope of provisions, encompassing any means employed to execute image capture or transmission. Such an amendment would align with the provisions established

17 Ahmed Al-Sayed Al-Sawadfi Ali Al-Najjar, ‘Criminal Protection of the Right to Image: A Comparative Study’ (2022) 12(80) Journal of Legal and Economic Research 538.

18 Mahmoud Najeeb Hosni, *Explanation of Penal Code: Special Section* (Judges Club Edition 1981) 764.

19 See, Federal Decree Law no (31) (n 12) art 431(2). This Article states that “anyone who violates the sanctity of private or family life of individuals by committing the following acts, outside of the conditions permitted by law or without the consent of the victim, shall be punished by imprisonment or fine.... (2) Capturing or transmitting a photograph of a person in a private place using any type of device”.

by the UAE Anti-Rumors and Cybercrime Law and mirror the specifications outlined in Article 226/1 of the Penal Code.²⁰

In fact, the provision pertaining to the Act of Transfer in the Anti-Rumors and Cybercrime Law aligns with corresponding provisions in the Crimes and Penal Code, save for a singular divergence. Specifically, regarding image transmission, the Anti-Rumors and Cybercrime Law specifies that such transmission must be conducted through any means of information technology or information system.²¹

- **Preservation of Photos**

The preservation of photos refers to preserving an individual's photographs or images without their consent and approval on a visual device, such as a cellphone or computer, employing technical means to facilitate subsequent viewing or broadcasting.²²

- **Broadcasting Photos**

According to the UAE Penal Code, broadcasting is defined as the act of making photos associated with an individual's private life accessible to an unrestricted audience or facilitating such access to those individuals. The Emirati legislator has stipulated that publication shall be done on any public device, such as television, cinema, press, or advertisement. Therefore, the offence persists even though the published photos are genuine, provided they pertain to an individual's private life without acquiring their explicit consent.²³ The broadcasting manifestation involves transferring or sending an image from one location to another in a manner that increases the audience following that image. In essence, the act of broadcasting enables the perpetrator to disseminate the image, expanding its viewership to a broader audience.²⁴

The Federal Supreme Court of the UAE has rendered a decision specifying that an act of insult perpetrated through the WhatsApp application does not fall within the preview of the Anti-Rumors and Cybercrime Law if it occurs within a confined space, invisible to others, irrespective of whether it transpires in an open space. This decision is attributed to the absence of publicity, primarily due to the configuration of the WhatsApp platform, wherein the content is restricted to the communicators, and no other individuals can access it. It is essential to note, nonetheless, that the provisions of the Crimes and Penal Code do not

20 French Penal Code (n 12) art 226-2 : Est puni d'un an d'emprisonnement et de 45 000 euros d'amende le fait, au moyen d'un procédé quelconque, volontairement de porter atteinte à l'intimité de la vie privée d'autrui: 2° En fixant, enregistrant ou transmettant, sans le consentement de celle-ci, l'image d'une personne se trouvant dans un lieu privé.

21 Hosni Al-Jundi, *Special Criminal Legislation in the United Arab Emirates*, book 3: *Law on Combating Information Technology Crimes* (sn 2009) 135.

22 Muhammad Amin Al-Roumi, *Computer and Internet Crimes* (University Press House 2004) 76.

23 Al-Daqani (n 9) 325-7.

24 Shaaban Mahmoud Muhammad Al-Hawari, 'Criminal Protection of the Right to Image' (2020) 7(2) *Journal of Legal Research* 63.

extend their jurisdiction to cover it. In this case, the characterisation of the incident shifts from the charge of cursing via information technology to the charge of cursing by a phone.²⁵

In accordance with the UAE Anti-Rumors and Cybercrime Law, facilitating viewing of a victim's image or photo by others is mandated through any means of information technology, including various social media websites. The act of publishing is considered to exist if the page privacy settings permit anyone access to and viewing of the content by anyone. In French law, publication should be done by any means, whether traditional or informational.²⁶

B. Special Criminal Conducts of Violations against the Right to Image under the UAE Anti-Rumors and Cybercrime Law:

The UAE Anti-Rumors and Cybercrime Law uniquely includes additional facets of criminal conduct related to the infringement of the right to image compared to the UAE Crime and Penal Code. These manifestations involve preparing, disclosing, copying, or preserving the image.

- ***Preparation***

Preparing digital images involves electronically altering others' photos without consent and using information technology tools, such as Photoshop or AI applications, which violates legal provisions. Such manipulation may depict victims in a fabricated scenario, intending to defame or insult them.

- ***Broadcasting***

The broadcasting manifestation involves transferring or sending an image from one location to another in a manner that increases the audience following that image. In essence, the act of broadcasting enables the perpetrator to disseminate the image, expanding its viewership to a broader audience.²⁷

- ***Disclosure***

Disclosing an image pertains to allowing others to view that image through the utilisation of information technology, thereby resembling the concept of disclosure.

- ***Copying***

Copying an image entails creating an exact duplicate of the original and temporarily storing it, often using the clipboard or other information technology methods. For instance, someone might replicate a photo from someone's Facebook account without permission. However,

25 App no 248/2018 (UAE Federal Supreme Court, 20 May 2018).

26 Stéphane Detraz, 'Les nouvelles dispositions réprimant les atteintes à l'intimité sexuelle : faire compliqué quand on peut faire simple (Commentaire de l'article 226-2-1 du code pénal issu de la loi n 2016-1321 du 7 octobre 2016)' (2016) 4 RSC Revue de science criminelle et de droit pénal comparé 741.

27 Al-Hawari (n 24) 63.

copying photos from websites without the owner's consent constitutes a criminal offence, indicating legislative efforts to bolster protection for individual images on social media.

- **Retention**

Retention refers to unlawfully storing images within an electronic system, either for personal use or dissemination to others' accounts. It is crucial to differentiate between private retention for personal use and public dissemination of these images to other's accounts.²⁸

- **Modifying or Manipulating an Image**

Modifying or manipulating means making alterations, additions, or deletions to another person's image, irrespective of the method through which it is obtained, whether legal or illegal. This behaviour occurs when the perpetrator edits or manipulates the image, regardless of whether the image is subsequently published.²⁹ The Emirati legislator considers this behaviour a crime against the right to image.³⁰ Notably, the French legislator, as stipulated in Article 226-8 of the Penal Code, considers the publication of a modified image of individuals without their consent a crime of aggravating circumstances.

C. Manifestations of Criminal Conduct under French Legislation: Voyeurism or Visual Spying

Since 2018, French legislators have stood as the sole authority to criminalise voyeurism or visual spying. Eavesdropping or spying pertains to the intentional invasion of other's privacy, which may involve the use of information technology without the explicit act of capturing photos or recording videos. These practices predominantly target women, focusing on sensitive body parts without their awareness or consent, often occurring in densely populated areas such as public transportation, metro stations, escalators, and other public places. In such environments, females may find it challenging to discern that their privacy is violated due to severe crowding.

Prior to 2018, the French judiciary did not categorise these actions as a crime of sexual assault unless there was physical contact between the perpetrator and the victim.³¹ Moreover, these actions were not deemed as crimes of honour assault simply because no violence was inflicted upon the victim. Accordingly, legislative intervention in 2018 included Article 226-3-1 within the French Penal Code, ensuring that those engaged in acts of voyeurism or visual spying could be duly penalised.³²

28 Ibrahim Abd Al-Nayel, *Criminal Protection of Private Life Sanctity as per French Penal Code* (Arab Renaissance 2000) 6.

29 Al-Daqani (n 9) 364-71.

30 Al-Najjar (n 17) 530.

31 Christine Lazerges, 'Politique criminelle et droit de la pédophilie' (2010) 3 RSC Revue de science criminelle et de droit pénal comparé 731.

32 Detraz (n 26) 747.

Regarding UAE legislation, both the Anti-Rumors and Cybercrime Law and the Crimes and Penal Code lack explicit provisions addressing such cases. It is our belief that these instances could be considered crimes of indecent assault, even in the absence of physical violence by the perpetrators. Certainly, an indecent assault crime involves observing or physically connecting specific parts of the human body considered private or highly sensitive without obtaining the victim's consent. Therefore, the perpetrator would be subject to criminalisation for indecent assault only if these conditions are satisfied. Otherwise, the act itself cannot be considered a crime of indecent assault.³³

It is noteworthy that criminal behaviour, as manifested in its previous forms, is concretely by tangible actions, rendering the violation of the right to image a positive crime.³⁴

2.2.2. Means and location of Violating the Right to Image in UAE and French Legislations

The present section deals with two primary issues: the means employed in committing the crime and where the offence occurs.

A. Means of Violating the Right to Image

The UAE legislator, as per Article 431-2 of the Crimes and Penal Code, defines the violation of the right to image as encompassing the act of capturing photos, recording videos, or transferring them using any device, including modern photographic tools. However, this definition excludes paintings or sculptures created without the use of such devices. Therefore, sculpting or painting a person without his or her consent is not a crime unless these artworks are photographed and shared. It would have been preferable if the Emirati legislation had adopted a broader terminology such as "any means", including information technology to encompass contemporary and future technologies. Despite this, Article 44 of the Anti-Rumors and Cybercrime law expands the scope of image violation, including capturing, transmitting, retaining, and copying images through information technology. However, the decision to segregate the means of committing the crime between the two laws, despite both being promulgated in 2021, lacks reasonable justification. In contrast, French legislation utilises comprehensive language such as "by any means" to avoid the need for specific delineation of traditional or modern devices, as this term inherently covers all potential means used to commit the crime.³⁵

It is essential to note that, despite the above confirmations, certain cases involving the sculpturing, painting, or engraving of an individual's image have been subject to the provisions of Article 45 of Law No. 38 of 2021 regarding Copyright and Related Rights, which addresses the infringement of the right to image. According to this Article, it is strictly forbidden for someone formally designated to capture a photo or record audio or video to retain, show, publish or distribute the original image without the owner's consent.

33 Ahmed Mahmoud Khalil, *Crimes of Indecent Assault and Corruption of Morals: With Comments by the Rulings of the Egyptian Court of Cassation* (Modern University Office 2009) 37.

34 Ahmed Fathi Sorour, *The Mediator in the Penal Code* (Arab Renaissance 1986) 308.

35 Isabelle Laliès, *La protection pénale de la vie privée* (Presses Universitaire d'Aix-Marseille 1999) 45.

B. Location of Violating the Right to Image

The UAE Crimes and Penal Code, along with the French Law, refrains from criminalising the act of capturing a photo of another natural person unless it occurs in a private place. On the other hand, the UAE Anti-Rumors and Cybercrime Law criminalises capturing a photo of another person through the use of information technology devices, regardless of whether it occurs in a public or private place.

Hence, the tangible aspect of the crime against the right to materialises only when the act of capturing a photo or transmitting it occurs within a private space. This condition is confirmed by Article 431/2 of the UAE Law, which stipulates that any person who commits the act of “capturing a photo of a person in a private place or transmitting it” shall be criminalised, and in cases other than those permitted by law or without the consent of the victim. The justification for criminalising the act of capturing photos of individuals in private without their consent lies in the imperative to safeguard the sanctity of individuals’ private lives.

Moreover, there are legal provisions that criminalise capturing photos in private places without the consent of their owners, such as Article 220-1 of the French Penal Code, which criminalises the violation of the privacy of individuals by means of capturing, recording, or transmitting the image of a person without their approval when they are in a private setting where they have a reasonable expectation of privacy. Article 226-2 of the same Code also penalises the invasion of privacy by the use of a person's image without their consent, especially if the image is used for profit or to harm the person's reputation. Article 9 of the French Civil Code also enshrines the right to respect for private life and personal image, as it says that everyone has the right to respect for the private life and personal image, and any unauthorised use or dissemination of a person's image can be considered a violation of this right.

The French Court of Cassation has ruled several times that unauthorised dissemination of a person's private image, especially when capturing in private settings or used for profit without consent, is an invasion of privacy, infringing on individuals' right to preserve their image and potentially amounting to legal liability.³⁶ In brief, French criminal law does criminalise taking a private photo of a natural person without their permission, particularly when it infringes upon their right to privacy in a private setting.

The contention posits that the crime against the right to image persists when an image of an individual is captured in a private place without his or her consent, regardless of his or her state of undress, whether fully clothed or unclothed. The legal standing of the perpetrator does not affect the commission of the crime. The perpetrator may have gained access to the private space through various means or may be situated remotely yet still able to capture or transmit the photo through the use of advanced devices.³⁷

36 De pourvoi n 20-13.753 (Cour de cassation, Chambre civile 1, 2 juin 2021).

37 Raed SA Faqir and Ehab Alrousan, ‘Reimagining Criminology: The Transformative Power of the Postmodern Paradigm’ (2023) 15(3) *Pakistan Journal of Criminology* 151.

While both Emirati and French laws underscore that the act in question must take place in a private space for it to be subject to criminalisation, they have not explicitly defined the exact meaning of “private place”. This approach aligns with that observed in many comparative penal legislations. Accordingly, jurisprudence and the judiciary have been compelled to grapple with this issue.

Jurisprudence has diverged into two approaches in the attempt to define the concept of a private place. One direction relies on personal criterion for its definition, while the other direction employs an objective criterion in delineating what constitutes a private place. The two approaches can be explained as follows:

- ***Private Place according to Personal Criterion***

Under this criterion, a place is considered private as long as the entry is prohibited without explicit permission from its owner.³⁸ When a person is in a state of privacy, the associated location and place shall be deemed private. In essence, according to this criterion, the privacy of any place is contingent upon the owner’s status, i.e. they are the ones who have the power to determine whether to permit or reject access to their place, thus differentiating between public and private places. Based on that perspective, numerous legal scholars have designated a car a private place, similarly to how a hotel room is considered private.³⁹ In contrast, the lobby of a hotel is considered a public place, as it is open for access to all without the need for specific permission.

- ***Private Place according to Objective Criterion***

Proponents of this approach define the private place on an objective criterion, where the inherent features of the place determine its classification as public or private. In other words, the design of a place determines that quality, such as parks, squares, streets, cafes, universities, and stadiums, which unequivocally fall under the category of public. Similarly, certain places are considered private by their design and inherent characteristics. For example, a bedroom, for instance, can never be construed as a public space.⁴⁰

The French Judiciary leans towards adopting the objective criterion when defining a private place. Some Courts consider the nature and usage of a place a reflection of the objective criterion in their assessments. However, other Courts have been inclined to adopt the criterion of analysing the facts.

In a notable decision, the French Court of Appeal in the City of Besancon considered the nature and usage of a hotel’s reception hall. They determined that the reception hall was a

38 Paulette Kayser, *La protection de la vie privée par le droit: Protection du secret de la vie privée* (3e éd., Economica 1995) 75.

39 Ghanem Mohammed Ghanem, ‘Legal Issues Arising from the Use of Surveillance Cameras in Public and Private Places: A Comparative Study’ (2021) 45(4) *Journal of Law* 271.

40 Lalies (n 35) 67.

public place due to its open accessibility to everyone without requiring explicit permission.⁴¹ Thus, the Court's Judgment was rendered based on the nature and usage of the place.⁴²

As previously mentioned, certain French Courts have inclined towards establishing a standard grounded in the analysis of facts and tangible elements to determine the nature of a place. This criterion was embraced by the Paris Court of Appeal when categorising hospital rooms as private places. On this basis, this Court convicted a journalist for photographing an artist while she was lying in a private room in a hospital.⁴³

Despite the crime against the right to image occurring in a private place, it is essential to acknowledge the existence of other cases where the violation has taken place in a location that cannot be considered private. For example, the French Court of Cassation has regarded the act of capturing a photo of someone in his or her private car as a violation of crime, in accordance with the provisions of Article 226-2 of the Penal Code of France.⁴⁴

On the other hand, some argue that crime against the right to image should be confined to instances occurring in a private place, asserting that capturing a photo in a public place is protected under the freedom of expression guaranteed by Constitutions.⁴⁵ Simultaneously, individuals are expected not to freely bring or engage in their private matters in public spaces without any restrictions. Consequently, they may seek protection against intrusions violating their privacy, as per their claims.⁴⁶ We advocate for a reconciliation between the two concerns, namely the right to publicise information and the protection of an individual's privacy.

Moreover, we also contend that the legislator's priority is to protect people's rights, recognising them as integral aspects of the moral entity of human beings across all places and periods. It is imperative to acknowledge that the UAE legislator has effectively addressed the matter of combating rumours and cybercrime by considering the commission of the crime against the right to image, irrespective of whether the place is public or private. Consequently, a fundamental criterion for privacy infringement has been established, applicable regardless of the place of its occurrence.

41 Lazerges (n 31) 737.

42 De pourvoi n 11-80.266 (Cour de cassation Chambre criminelle, 25 octobre 2011) [2011] Bulletin criminel 214.

43 Crim, 8 December 1983, BC n 333; D 1985, IR 17, obs Lindon; Gaz Pal 1984, 1, note JP Doucet; RSC 1985, 84, obs Levasseur; Rouen, 19 March 1987, Gaz Pal 1987, 2, somm, 384. Cited by Jameel Abdelbaki Al-Sakeir, 'The Right to Image and Forensic Evidence' (2015) 3(10) Kuwait International Law School Journal 292.

44 Joelle Verbrugge, *Droit à l'image et droit de faire des images* (2e éd., KnowWare 2017) 47.

45 Mashallah Othman Muhammad, 'Criminal Protection of the Image of Person in Human Rights: A study in the French, Bahraini, and Libyan Legislations' (2021) 86 UAEU Law Journal 416.

46 Al-Khasawna and Al-Moumani (n 2) 190.

C. The Individual's Consent or Permission by Law

Article 431 of the UAE Crimes and Penal Code, Article No 44 of the UAE Anti-Rumors and Cybercrime Law, and Article 226-2 of the French Penal Code stipulate that the violation crime against the right to image occurs when the act of capturing or transferring a photo of an individual is carried out without the victim's consent or in circumstances not permitted by law. This section of the current study will address two key issues: the absence of the victim's approval and cases unauthorised by law, as follows:

- ***Absence of the Victim's Approval***

For the tangible element of the violation crime against the right to image to be fully realised, the perpetrator must have committed the act, as described previously, without the victim's approval. It is crucial to note that the victim's consent transforms the act, automatically shifting it from the sphere of privacy to the sphere of publicity. In such instances, no crime would be deemed to have occurred.

Based on the aforementioned discussion, this type of crime primarily hinges on the victim's approval or refusal. Nevertheless, it is noteworthy that criminal law places significant emphasis on protecting the interests of society as a whole. However, the legislator has the discretion to consider the victim's consent, leading to the permissibility of the act. Both Emirati and French legislators specify that "if a victim's photo is captured or transmitted with approval, the crime against the right to image does not occur in such cases"⁴⁷

Accordingly, the victim's consent for such infringement of his or her personal rights could be taken as a reason for permissibility, such as, for instance, the approval given by public figures to photographers to capture their photos. It is argued that this permissibility is attributed to the fact that capturing or transferring the photo is for the benefit of such individuals.⁴⁸ Meanwhile, it does not harm or threaten the public interests of society in any way. Consent, therefore, may be regarded as a form of limitation or restriction to the violation of the individual's right to image.

However, for the victim's consent to have legal significance regarding capturing, transmitting or publishing a photo, it must be valid consent, i.e. it should be the result of completely free will and not being subject to coercion or deception. Additionally, it must originate from a competent individual with the authority to grant such approval.⁴⁹ Furthermore, consent should be confined to the subject in question and not be extended beyond that. It may also be given in exchange for compensation.

47 Ghanem (n 39) 261-2.

48 Mahmoud Najeeb Hosni, 'Criminal Protection of Private Life' (1987) 6 Judges Magazine 270.

49 French Penal Code (n 12) art 226-1. French Law stipulates that if the act of taking or transmitting a photo of a minor is committed, in this case consent must be obtained from those who are in charge of this minor. There is no counterpart to this text in the UAE Law.

In both Emirati and French laws, consent might also manifest in the form of a presumption.⁵⁰ For example, if the photo is captured in a public place during a meeting or an event, being heard and seen by all attendees, their consent is presumed. On the other hand, the assumption does not exist if the photos are captured surreptitiously and without the knowledge of those people.⁵¹

It is posited that this consent should be obtained prior to the act of capturing or transferring the photo or at least contemporaneously with it. Any approval subsequent to committing the act has no effect since it does not remove what has already occurred. In this specific issue, we note a difference between French and Emirati law. According to French law, subsequent consent shall lead to dropping the crime since the French legislator has considered this act a crime of complaint, based on the provisions of Article 226-6 of the French Penal Code, amended by the Law of 2016 regarding Digital Government. As for the UAE Law, subsequent consent does not affect the realisation of the crime because there is no procedural restriction on the Public Prosecution's Authority to initiate a criminal case, like that of the French Law.⁵²

- **Cases Unauthorised by Law**

The crime against the right to image exists not only due to the victim's absence of consent but also in circumstances not permitted by law. In other words, such an act is not deemed a crime if it is permitted by law, which includes capturing, broadcasting, transmitting, or publishing photos. It is well-known that the law, in certain cases, permits capturing photos of the injured, deceased, or victims of accidents or disasters. Similarly, the law permits photographing public events and activities organised on special occasions, such as covering and broadcasting parliamentary sessions on air.⁵³

Furthermore, both UAE and French laws permit the capturing of photos for the public interest, such as publishing a photo of a wanted person. Additionally, surveillance cameras are allowed in banks, airports, shops, and government sites to monitor individuals who visit or work there.⁵⁴

Finally, we should note that both laws allow photographers to take and publish photos of celebrities or famous figures without obtaining approval, provided that these photos are related to public events and avoid private occasions that might negatively affect the personal lives of those figures.⁵⁵

50 French Penal Code (n 12) art 622-1.

51 Nabil Fzai', *Criminal Protection of the Right to Image in Egyptian Law* (Dar Mahmoud Pub & Distribution 2016) 155.

52 Abdel Kader Rahal, 'The Legal Structure of the Crime of Taking and Publishing a Photo in Algerian and French Legislation: A Comparative Procedural Objective Study' (2022) 15(1) *Journal of Law and Human Sciences* 355-6.

53 Al-Najjar (n 17) 523.

54 Khalid Mustafa Fahmy, *Civil Liability of Journalist for his Work* (New University Pub House 2003) 219.

55 Al-Ahwani (n 10) 278.

2.2.3. Intangible Aspect

It can be noted that the crime against the right to image is considered intentional according to the UAE and French laws,⁵⁶ and its moral element takes the form of general criminal intent, mainly based on the elements of knowledge and will. Hence, this crime does not occur if the act of capturing or transmitting a photo has been unintentional, such as when a person inadvertently activates a camera in a private place. By chance, it captures an image of a person present there.

The establishment of general criminal intent "*mens rea*" occurs when the perpetrator is fully aware of capturing, transmitting, or publishing an image/photo utilising a device or some type of electronic information system of an individual in a private place. In other words, the offender must be aware of all the tangible elements, which include the means he or she uses, the nature of the place where the crime is committed, and the lack of consent. If the perpetrator lacks awareness of these elements, the criminal intent in this case is absent, and consequently, the crime does not exist.

In addition to the perpetrator's awareness of the elements that constitute the tangible element mentioned above, the perpetrator's intention must be directed towards committing the crime through the use of a device or a specific technical means without obtaining the victim's consent. Even if all these conditions are met, the crime might not exist if a person captures a photo of a natural scene and is subsequently surprised to find an individual in an intimate state with another person captured in that photo.

Thus, the crime is founded on the elements of knowledge and will, irrespective of the motive, as long as the general criminal intent is present. Nevertheless, it is important to acknowledge that the perpetrator's motive for committing the crime could be to obtain a sum of money, harm the victim, satisfy curiosity, or seek revenge.

Moreover, we may need to address certain forms of image infringement that require not only general criminal intent but also what we may term 'specific criminal intent, as outlined in clause 3 of Article 44 of Anti-Rumors and Cybercrime Law, which stipulates that the crime of capturing and/or publishing of an individual photo with certain changes or modifications shall be accompanied to harm the victim. Such behaviour falls under the category of "specific criminal intent". In essence, the objective behind capturing the photo and altering it is to harm, defame or insult the image owner.

In case of a perpetrator utilising an electronic information system or an information technology means to manipulate or modify another person's image to defame or offend, specific and general intent must be present (Article 44 of the Anti-Rumors and Cybercrime Law).⁵⁷

56 Fadlallah Muhammad Al-Hassan Fadlallah, 'Violation Crime against Private Life Sanctity in Emirati Law: Analytical Study' (2020) 5(44) Generation of In-depth Legal Research Journal 47.

57 *ibid* 37.

3 PENALTIES PRESCRIBED FOR THE VIOLATION CRIME AGAINST IMAGE / PHOTO COPYRIGHT

It is noteworthy to highlight that both Emirati and French legislators have established various penalties and measures for all forms of criminal violations of an individual's right to image, encompassing both non-aggravated and aggravated offences.

3.1. Punishment of Simple Form Crimes

The forthcoming subsections deal with the types of punishment for simple-form crimes as outlined by the UAE laws and the French Penal Code; these are as follows:

3.1.1. Punishment according to UAE Penal Legislation

The UAE legislator has stipulated various penalties in terms of amount and duration in Emirati law, Crimes and Penal Code, as well as Anti-Rumors and Cybercrime Laws.

A. Punishment according to UAE Crimes and Penal Code⁵⁸

Article 431-2 of the UAE Crimes and Penal Code stipulates that individuals who capture or transmit a photo of a person in privacy shall be subject to punishment, including imprisonment and a fine.

The analysis of Article 431-2 of the Crimes and Penal Code reveals several key points regarding the punishment for violating the right to image. Firstly, the article mandates that individuals who capture or transmit photos of a person in privacy are subject to imprisonment and a fine without giving the judge discretionary power to select between the two penalties. This dual punishment is obligatory upon the conviction. However, the legislator has not specified the duration of imprisonment or the amount of the fine, entrusting the court with this decision based on the case circumstances while adhering to the prescribed minimum and maximum limits for each penalty.

Since the crime against the right to image is a misdemeanour, the court is required to set the prison sentence within the range of one month to three years, as outlined in Article 72 of the same law. Similarly, concerning fines, the court has the discretion to impose an amount not less than one thousand Emirati Dirhams and not exceeding AED 5 million⁵⁹ under Article 72.

58 Federal Decree Law no (31) (n 12).

59 1000 United Arab Emirates Dirham equals (10387.03) Ukrainian hryvnia and 5,000,000 United Arab Emirates Dirham equals (51935169.40) Ukrainian hryvnia, while 1000 United Arab Emirates Dirham equals (251.28 Euro) and 5,000,000 United Arab Emirates Dirham equals to (1,256,384.49 Euro).

It should be noted that the legal provisions stipulate that publicly publishing photos related to the personal lives of families or individuals⁶⁰ using a method that lends the act gravity necessitates punishment.⁶¹ If one of these two conditions, i.e. public publishing and privacy, does not exist, the act cannot be considered a crime.

B. Punishment according to Anti-Rumors and Cybercrime Law⁶²

Article 44 of the Anti-Rumors and Cybercrime Law stipulates that anyone using a computer network or electronic information system intending to invade someone's life privacy without consent shall be subject to punishment in cases not authorised by law. The penalty involves imprisonment for a period of not less than six months and a fine ranging from AED 150,000 to AED 500,000,⁶³ or one of these two penalties. These penalties must be imposed in cases of using any IT means with the intention of invading one's privacy without consent and in cases other than those authorised by law in one of the following ways:⁶⁴

1. Anyone who takes photos of others in any public or private place or prepares, transmits, discloses, copies, or keeps electronic images of those people.
2. Anyone who publishes electronic images or photographs to someone, even if they are correct and real, with the intention of harming this person. The legislator here requires availability, i.e. the publication of these photos has been done with the intention to cause harm to the victim, and therefore, the crime does not exist unless there is evidence that they have been published to cause harm, regardless of whether these photos are real or fake.
3. Anyone who takes photos of injured, dead, or victims of accidents or disasters and transmits or publishes them without the permission or approval of concerned people. Here, we note that the legislator links the crime of capturing photos to a lack of permission that should be obtained from public authorities or their families.

60 Article No. 10 of the Crimes and Penal Code stipulates that: "Within the provisions of this Law, they shall be considered methods of publicity: 1. Say or Shout if it happens in public or transmitted by any means in a Crowd, Public Place, or a Place available to the Public; 2. Actions, Signals, or Movements if they occur in a Crowd or in a Public Place or a place available to the Public, or transmitted to someone does exist in these places by any means, or seen by someone who has no involvement in them; 3. Writing, Drawings, Pictures, Symbols, Audio, Visual or Read Materials, Films and other Methods of Expression if they are displayed among a group, or in a Public Place or a place available to the Public or distributed or circulated without discrimination by any means or sold to people or offered to them for sale. anywhere".

61 Al-Jundi (n 21) 204.

62 Federal Decree Law no (34) (n 12).

63 150,000 United Arab Emirates Dirham equals (37,636.81 Euro) and 500,000 United Arab Emirates Dirham equals (125,456.03 Euro).

64 Khalid Iraqi, *Law on Combating Cybercrimes and Rumors: in accordance with Federal Decree Law no (34) of 2021 regarding Combating Cybercrimes and Rumors in the United Arab Emirates* (United Pub & Distribution 2022) 401.

C. Punishment according to the French Penal Code⁶⁵

Article 226-1 of the French Penal Code stipulates that anyone who intentionally captures, transmits, or records a photograph of another person in privacy without his consent shall be punished with imprisonment and a fine of EUR 45,000. Besides, the French Law, in Article 226-3-1, also punishes anyone who commits the act of visual voyeurism with one-year imprisonment and a fine of EUR 15,000, as well as anyone who resorts to using any means whatsoever to view one's sensitive organs due to the way he or she dresses or being in a closed place, and does not want others to see them in that situation. This Punishment applies to all those who commit the act without the knowledge or consent of the victim.

3.1.2. Complementary Punishments

A. Complementary Punishments according to UAE Crimes and Penal Code:

Article 431 of the UAE Crimes and Penal Code stipulates that in all cases, a judgment shall be issued to confiscate devices and other items that may have been used in the violation of the right to image. Besides, all recordings obtained from those devices shall be destroyed as well.

B. Complementary Punishments according to Anti-Cybercrime Law

Article 56 of the Emirati Anti-Rumors and Cybercrime Law stipulates that if the perpetrator is convicted of committing the violation crime against the right to image, the Court shall order confiscation of the devices, programs, or any means used to commit this crime and even the funds obtained from that act. All recordings, information, or data obtained from those devices shall be destroyed so that they cannot be used again, whereas the confiscation penalty is considered complementary and obligatory, and its imposition shall not prejudice the rights of bona fide third parties.⁶⁶

3.1.3. Penal Measures and Violation Penalty

A. Penal Measures

Article 59 of Anti-Rumors and Cybercrime Law permits the Court, in case of a crime against the right to image, to take any of the following measures:

1. The Court might issue an order to place the convict either under supervision, subject him to an electronic monitoring system, deny him or her of using any IT means, or place him or her in a therapeutic shelter or rehabilitation centre for a period that the court deems appropriate.
2. The Court may completely or partially close the violating site whenever technically possible.
3. The violating website might be blocked completely or partially for the period determined by the court.

65 French Penal Code (n 12).

66 Iraqi (n 64) 505.

B. Violation of Penal Measures

Article 59 of the same law punishes anyone who violates any of the penal measures by imprisonment for a period not exceeding one year or a fine not exceeding AED 5,000.⁶⁷ The Court may prolong the imprisonment for a period not exceeding half the original period provided, and the total duration shall not be more than (3) three years, or it might be replaced by another measure as stated above.

3.1.4. Initiation Punishment according to UAE and French Laws

The Emirati legislator punishes the attempt to assault the right as a misdemeanour in the form stipulated in Article 44 of Federal Law on Anti-Rumors and Cybercrimes; based on the provisions of Article 57 of this law, the Emirati legislator penalises any attempt at misdemeanour with half the penalty prescribed for the complete crime.

However, the Emirati legislator does not penalise a misdemeanour attempt to infringe upon the right to image, as stipulated in Article 431 of the Crimes and Penal Code. This law lacks specific provisions for punishing such behaviour. Accordingly, we advocate for legislative intervention to stipulate penalties for attempts to commit crimes against personal images and photos, as it represents a serious violation of one's right to protect his or her photos. In other words, the Crimes and Penal Code should be somehow consistent with the Federal Law on Anti-Rumors and Cybercrimes.⁶⁸

The French Penal Code explicitly stipulates in Article 226-5 that an attempt to capture or transmit one's photo without permission shall be penalised with the same penalty prescribed for a fully committed crime. After all, it is possible to imagine an attempt to violate the right to image, such as, for example, when someone is arrested while trying to capture a photo of an individual in privacy. There is no doubt that this behaviour would be considered an attempt to commit a crime.

3.2. Crime Penalty in Aggravated Form

Both UAE and French laws should be taken into consideration when discussing the crime penalty in aggravated form.

3.2.1. UAE Laws

A. UAE Crimes and Penal Code

Article 431 of the Crimes and Penal Law has determined the penalty to imprisonment for a period not exceeding seven years with a fine if a public employee commits one of the acts constituting a violation of the right to image, based on his or her position of authority.

Therefore, it is quite evident that aggravating circumstances can be applied if the offender is a public employee in accordance with the meaning of Article 5 of the same law, if he has

67 5,000 United Arab Emirates Dirham equals (1,254.56 Euro).

68 Iraqi (n 64) 500.

committed one of the forms of violation crime stated before, i.e. taking, transmitting, publishing a photo, and exploiting for this purpose the authorities granted to him by virtue of being in a public position.

It should also be noted that the legislator has set a maximum for the imprisonment penalty without identifying a minimum, leaving it to the judge to impose the appropriate penalty. The fine also has to be determined by the court. However, the legislator has made both imprisonment and fine as obligatory punishments.

B. Anti-Rumors and Cybercrime Law

In Anti-Rumors and Cybercrime Law, the legislator distinguishes between two types of aggravating circumstances: specific aggravating circumstances related to violating private life sanctity, including the crime already described above, and general aggravating circumstances associated with committing any cybercrime stipulated in the Anti-Rumors and Cybercrime Law.

Article 44 of the Anti-Rumors and Cybercrime Law includes a few **specific aggravating circumstances**. The Penalties for such type crimes are identified below:⁶⁹

- Article 44 of the Law in question stipulates that anyone who uses an electronic information system, or any IT means, shall be punished with imprisonment for a period of not less than one year and a fine of not less than two hundred and fifty thousand Dirhams and not exceeding AED 5,000, or one of these two penalties. The crime shall encompass any alteration or manipulation of a recording or a photo with the intent to defame or offend another person. It should be noted, however, that three conditions are required to increase the penalty: editing a photo and then publishing it through IT means to defame and insult the photo owner.
- The final paragraph of Article 44 of the Anti-Rumors and Cybercrime Law increases the penalty to imprisonment for a period of no less than one year and a fine of no less than AED 250,000 and not exceeding AED 500,000 for anyone who uses an electronic information system or any technical means to make any modification or manipulation to one's photo to defame or offend the owner of that photo. The Court has the discretion to apply one or both penalties: imprisonment or a fine.

On the other hand, Article 60 of the Law on Anti-Rumors and Cybercrime stipulates **general aggravating circumstances** that apply to the offender who commits any crime stipulated in this Law, which are:

- The perpetrator commits any crime stipulated in the Anti-Rumors and Cybercrime Law by exploiting his or her authorities at work.
- The perpetrator commits any crime stipulated in this Law on behalf of or for the benefit of a foreign country, any hostile, terrorist group, or illegal organisation.

69 *ibid* 510.

3.2.2. French Law

French law increases the penalty for the violation of a crime against the right to image in the following cases:

1. Publishing a photo of a spouse or partner: Article 226-1 of the Penal Code stipulates that the penalty for a spouse, boyfriend, and victim partner as per a civil solidarity pact who commits an act that includes a violation of right to image shall be increased to two-year imprisonment and a fine of EUR 60,000.
2. Publishing modified photo (Montage Process): Under Article 226-8 of the Penal Code, the penalty for the offender who publishes an image of a person after modifying it intentionally without the victim's approval is one-year imprisonment and a fine of EUR 15,000. It is argued that the punishment increase is attributed to the perpetrator's attempt to change the original photo by adding or deleting certain elements of the image without the victim's consent.⁷⁰

It is remarkable to note that French Law tightens the penalty for modifying the photo by any means, while the UAE Anti-Rumors and Cybercrime Law confines the penalty to those who use electronic information systems or IT means in their modification to the photo. Another difference between the two laws is that the UAE law punishes merely the modification of an image without referring to the publishing process. In contrast, French law stipulates that the perpetrator should be punished for publishing a modified photo, regardless of whether the modification has been carried out by the perpetrator himself or someone else.

However, both UAE and French laws converge on the notion that the modification or publication of a photo must have occurred without the victim's consent and with the intent to harm the involved person.

3. The French Law, in Article No. 226-3-1, increases the penalty for visual voyeurism to up to two-year imprisonment and a fine of EUR 30,000 if this crime is committed by a public employee who exploits the powers granted to them by their position or when the victim is a minor, or suffering from weakness, due to age, illness, physical disability, mental or psychological conditions, or because of pregnancy, whether being apparent or known by the perpetrator, or when the crime is committed by more than one person, whether they are perpetrators or accomplices, or it has been committed on public transportation, or in a place designated for access to public transportation, or when photos of the victim's sensitive organs are taken, published, or recorded.
4. Publishing photos of a sexual nature: In Article 226-2-1 of the Penal Code, the French legislator has increased the penalty for the offender who publishes a photo of a person, whether in a public or private place, that is of a sexual nature or related

70 ECtHR, *Right to the protection of one's image: Factsheet* (Press Unit ECtHR 2021).

to sexual matters, to become two-year imprisonment and a fine of EUR 60,000. This penalty is applied even if the victim consents to having a photo of a sexual nature taken,⁷¹ but does not agree to publishing. This has become a common case nowadays due to the development of information technology.⁷²

The French legislator has done well in enshrining this text, which accurately addresses the case of the perpetrator who obtains the victim's photos with his/her consent but is published without approval for various reasons. With this text, the French legislator has put an end to the impunity of these perpetrators in such cases.⁷³

4 CONCLUSIONS and RECOMMENDATIONS

In this research, we intend to offer a comprehensive overview of the violation of the right to image, delineating it into two main parts. The first part is related to the elements of the crime, while the second is dedicated to the penalties prescribed for this type of crime, whether in its simple or aggravated forms. From our analysis, several conclusions and recommendations have emerged.

4.1. Conclusions

Comparative legislation has not identified a specific definition of a crime against the right to image, leaving this matter to the consideration of jurisprudence and the judiciary.

Emirati and French law have not included independent provisions regarding the crime against the right to image due to its inclusion within the framework of rules governing the protection of private life.

The right to image is not absolute; instead, it is subject to exceptions that allow the capture and publication of a photo when it serves the public interest.

Image or photoprotection is considered one of the rights associated with the elements of private life.

The UAE Crimes and Penal Code requires the use of any device to commit a crime against the right to image, whereas the UAE Anti-Rumors and Cybercrime Law stipulates that this crime is committed exclusively by means of information technology. The French Law, on the other hand, states that the crime can be committed by any means.

71 Detraz (n 26) 741.

72 De pourvoi n 15-82.039 (Cour de cassation Chambre criminelle, 30 mars 2016) [2016] Bulletin criminel 112.

73 Catherine Berlaud, 'QPC: diffusion d'enregistrements présentant un caractère sexuel' (*Lextenso*, 5 octobre 2021) <<https://www.actu-juridique.fr/brevs/qpc/qpc-diffusion-denregistrements-presentant-un-caractere-sexuel/>> accédé 22 décembre 2023.

Consenting to capture a photo does not automatically grant permission to publish it. Explicit consent is typically required for publication, especially for commercial use or if the photo could be seen as invasive or defamatory. Context matters and legal frameworks vary by jurisdiction, with special considerations for public figures and minors. Additionally, contractual agreements in professional settings may dictate photo ownership and usage rights.

UAE and French law stipulate that the crime against the right to image does not exist unless committed privately and without obtaining permission.

The UAE Anti-Rumors and Cybercrime Law and the French Penal Code criminalise modifying or processing a Photo without the victim's approval.

The French Penal Code punishes with a severe penalty anyone who publishes a photo of a person in a sexual situation, while there is no such penalty in the UAE legislation.

Finally, it is essential to note that the crime against the right to image is categorised as an Intentional offence.

4.2. Recommendations

Listed below are some vital recommendations.

We propose that the second clause of Article 431 of the UAE Crimes and Penal Code shall be amended by replacing the statement "anyone captures or transmits, by any device, a photo of a person in private" with the following provision: "anyone captures or transmits, by any means, a photo of a person in private", similar to that of the French Penal Code.

We recommend that the Emirati legislator devote a special text to criminalising the violation of the right to image without the victim's consent through the acts of painting, sculpturing, engraving, publishing, or distributing.

We suggest that the UAE legislator amend Article No. 431 of the Crimes and Penal Code to criminalise taking a photo of another person without his consent, whether in privacy or at a public place, similar to the text in the Anti-Rumors and Cybercrime Law.

It would be better if the UAE legislator in the Crimes and Penal Code criminalises violations of the right to image through deleting, adding, or distorting, similar to what is stipulated in the Anti-Rumors and Cybercrime Law.

Finally, we do recommend that the Emirati legislator introduce a new text, whether in the Crimes and Penal Code or in the Anti-Rumors and Cybercrime Law, under which anyone who publishes an image of another person in a sexual situation or of a sexual nature without the approval of related people shall be criminalised, similar to that of the French Penal Code.

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