

Balancing AI and Judicial Conviction in Criminal Evidence

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Abstract

The aim of this study is to keep pace with the rapid progress in the field of technology, many sectors have begun to accept artificial intelligence and its various applications, to save effort and time, and striving to obtain more accurate results. One of these sectors that use artificial intelligence is the judiciary in the field of criminal evidence, as these technologies are used in criminal justice, especially in the field of detecting and tracking crimes and accelerating the identification of their perpetrators through complex algorithmic systems that can identify the accused who committed the crime after feeding them with information. Use of artificial intelligence in criminal justice raises problems related to the validity of its results in building the judge's conviction, and this requires the development of legal legislation regulating its practical applications and keeping pace with its developments. This research aims to demonstrate the extent to which these technologies can be used in the field of criminal evidence and the crystallization of the judge's conviction: in terms of their nature and legal validity. Based on this, legal systems and criminal justice institutions must prepare themselves to confront the rapid changes and developments caused by artificial intelligence and be able to confront it and benefit from it in improving criminal justice systems

Keyword: Criminal evidence, Artificial intelligence, Judicial conviction.

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1 : Introduction

This era is characterized by advanced technology, information technology and digital information, while artificial intelligence technologies have become increasingly important in all areas of life, including the judicial system. These technologies provide enormous potential in terms of data analysis, inferring patterns, and providing accurate predictions, in addition to the shortcomings of legislation due to its lack of development with the development of crime. In light of this progress, the judiciary has begun to accept the idea of artificial intelligence and its various applications, especially in the field of criminal evidence, with the aim of saving effort and time, and striving to obtain more accurate results in criminal justice. Criminal justice, like other fields, is no longer immune to the influence of artificial intelligence and benefiting from its systems to develop work in the joints of justice and its paths, especially in the field of crime detection. However, the problem arises in the legal validity of the results provided by artificial intelligence to the criminal judge and to what extent the conviction provided by that intelligence can be relied upon in building the emotional conviction of the human judge and then leading him to issue a ruling based on it . Problems also arise in determining the methods of detecting crimes, including artificial intelligence methods, and we will be forced to confront such problems and respond to their practical applications in the future, and before that we will be forced to develop legal legislation that regulates them and is capable of setting its provisions and covering all its possibilities. Based on that, legal systems and criminal justice institutions must prepare themselves to confront the rapid changes and developments that occur . Therefore, in this study, we will discuss the extent to which these technologies can be used in the field of criminal evidence and the existing methods of detection, as well as delving into their nature and legal validity before the criminal judge and how to deal with them. This study also addresses the principle of the criminal judge's emotional conviction in dealing with them in terms of the scope of authority to use them. As follows:

2 The nature of the balance between artificial intelligence techniques and judicial conviction

With the scientific and technological development, the complexity of crimes has increased and criminals have used advanced means to commit them and attempt to obscure their

features, which has led to the emergence of new evidence based on scientific knowledge and objective analysis of physical traces, including artificial intelligence methods and techniques. Therefore, we reveal a statement of the concept of artificial intelligence techniques in terms of their nature, and the scope of using these techniques in the field of criminal evidence. We also address the concept of the criminal judge's emotional conviction in dealing with them in terms of the scope of his authority to use them, in sequence:

2.1 The concept of balancing between artificial intelligence techniques and judicial conviction

2.1.1 The Concept of Artificial Intelligence in Criminal Evidence

There are many definitions associated with artificial intelligence. John McCarthy, the godfather of the idea of artificial intelligence, defined it in 1955 as: "The science and engineering of creating intelligent machines through the intelligence shown by machines and programs that mimic human mental abilities and patterns of operation, such as the ability to learn, infer, and react to situations that were not programmed into the machine. It is an academic field that means how to create computers and programs capable of adopting intelligent behavior in learning language and natural texts from data, recognizing sound, image, shapes, virtual agents, and machine learning platforms" (Al-Fileti:2023, 66) . Nielsen also defined artificial intelligence as: "Building machines capable of performing tasks that require human intelligence, for the organization's ability to achieve its goals in an appropriate and forward-looking manner" (Muhammad, 2017:6). While some have defined artificial intelligence as: "A set of behaviors characterized by computer programs to work on simulating human mental ability to enhance productive capacity (Al-Husseini, 2002: 211) . Meaning that it possesses characteristics related to human intelligence and the ability to make decisions to a degree similar to human behavior in various fields (Arnous, 2007: 9) . Some have also defined it as: "Intelligence that appears in an abnormal entity." Man-made, artificial intelligence is one of the branches of informatics that studies the development of intelligent algorithms and technologies to be applied to computers and robots so that they have intelligent behavior in performing tasks or solving problems (Al-Asadi, 2020: 29).

In light of the above, it is clear that the interpretations of jurists of the concept of artificial intelligence varied, as some considered it a branch of engineering design, and others considered it to simulate human thinking systems so that the computer can perform some tasks instead of humans (Awadin, 2020:6), which require thinking, understanding, hearing, speaking and moving in an organized and logical manner that is consistent with human nature and instinct. It is also clear from the set of definitions shown above that artificial intelligence is a simulation of human intelligence methods and how to use acquired experience in various fields, and among the most prominent artificial intelligence systems are robots that have become widespread in many countries. For **our part**, we define artificial intelligence as: "A science that aims to understand the nature of human natural intelligence and create computer programs that are capable of simulating human mental ability, especially the ability to learn, infer,

analyze, and react, and placing them in non-living bodies such as machines and equipment to be able to perform tasks and functions similar to human functions in an autonomous manner and without prior human intervention.”

2.1.2 The Concept of Judicial Conviction in Criminal Eviden

The judicial conviction of the criminal judge has been defined in multiple ways by legal scholars. It has been said in its definition that, according to it, the judge can accept all the evidence presented in the criminal case and he has the right to exclude any evidence that he is not reassured by (Amal, 2012:58) . It has also been said that it is the mental process based on rational and logical foundations and linked to the fair conscience to perceive the truth through the sound assessment of the evidence (Sheelan, 2023:190). What is meant by judicial conviction is not personal or emotional certainty, but rather the certainty that is established in the conscience of all from the induction of the facts of the case.

With its availability, the ruling comes out in accordance with justice, where the role of the judge comes in understanding, scrutinizing and studying the evidence presented to him to draw his certainty from it in order to use it in the end in building his belief, which may not be formed at all based on his emotions, but rather with a rational conviction that finds its source in the mind and not in emotion, as German procedural law did not require the judge to reach absolute certainty, as absolute certainty is a state that may exceed the limits and ability of humans to comprehend it, but his conviction according to realistic certainty based on the laws of logic and the absence of reasonable doubt (Al-Iham, 2014: 140) , which lies in not building his conviction on his knowledge, which is stipulated in Article (112) of the Iraqi Code of Criminal Procedure, and supported by the Iraqi judiciary (Ruling of the Erbil Criminal Court, 2013: 95). Building conviction must be based on certainty and conviction, not on doubt and guesswork, and based on the evidence presented for discussion in the case and on sound logic stipulated in the French Code of Procedure issued in 1958 according to Article (427) thereof. As for the restriction on the support of evidence and the reasons for judgments: As for the support of evidence, it is considered a result of the principle of judicial conviction, as the judge can rely on all the evidence presented to him and coordinate between them as a unit that leads to the completion of his conviction. The evidence in criminal cases is supportive and complements each other (Sharif, 2005:13)

. It is not possible to look at a specific piece of evidence in isolation from the rest of the evidence, but it is sufficient for the evidence as a whole to lead to what the judgment intended and to be productive in completing the court's conviction and reassurance in what it has concluded. As for the reasoning of the ruling, the Iraqi and comparative legislator obliges the criminal judge to reason his rulings, and the Anglo-American law emphasized the judge's obligation to reason his ruling about the legal aspect without factual issues, from a proven theoretical point of view, contrary to what practical practice has shown in terms of increasing the judge's authority and the consistency of his interference within the scope of the jury (Ahmed, 2005:346) . What is meant by legally restricted reasoning is to specify the grounds and

arguments on which the ruling is based and which result in what it has concluded, whether in terms of reality or in terms of law (Shelan, 2023:191). Or it is the set of factual and legal arguments from which the ruling was derived (Najeeb Hassani, 924:1992). Accordingly, we see here that the judge is obligated to mention the criminal or scientific evidence, even if it was derived by artificial intelligence techniques, on which he relied in his ruling, and a clear manner so that the Court of Cassation can monitor the correctness of the application of the law to the incident that was the reason for issuing the ruling.

2.2 The scope of application of artificial intelligence techniques and models in forensic evidence

2.2.1 Scope of Application of Artificial Intelligence Technologies in Criminal Evidence

In recent years, the development of artificial intelligence technology has made great leaps, and the most prominent manifestation of this is the “deep learning” technology. It focuses on artificial neural networks that mimic the way the human brain works, meaning that they are capable of experimenting, learning, and developing themselves without human intervention (Al-Dhaheri, 2017: 3). The elimination of deep learning technologies depends on it, as it can be trained to replace the best experts and specialists in a particular specialty. These are indicators that artificial intelligence will play an important role in the coming decades.

The practical importance of artificial intelligence systems comes from the fact that they are considered a necessity of modern life, as they contribute to facilitating the performance of many things with a performance that exceeds human performance, because these systems are the most advanced technology in the current period in various fields, this is on the one hand (Othman, 2021:1640), and on the other hand, the expansion in building these systems is noticeable, as they are no longer limited only to The computer, but it has become used in many fields, including the litigation system (Abdul Aziz, 2023:7). So that he has the ability to solve problems and make decisions in a logical and orderly manner and in the same way the human mind thinks (Afifi, 2015:21). (CUI, Xiaoyi,2016,61). Artificial intelligence techniques can help in criminal evidence, by real perpetrator of the incident, as it can, through its complex programming and the use of certain algorithms, uncover the mystery in any incident, through the data it obtains. By photographing the crime scene and studying the health condition of the accused it can prove the extent of his ability to commit the behavior that constitutes the crime or not in a more accurate way than humans (Al-Sharif, 2018, 7), and artificial intelligence can be used in police chases. For criminals wanted, where you can analyze the criminal's personality and determine his personality type and the best ways to deal with him. In such situations and due to nervous psychological pressure, people may make mistakes in dealing or find it difficult to think of appropriate solutions, but the machine is not affected by such pressures, in addition to its ability in moments to review the criminal's criminal record or his human life, to know his weak points and exploit them in knowing him and facilitating his arrest.

2.2.2 Models of artificial intelligence technology devices used in obtaining evidence in criminal proof:

The use of these technologies during the stages of criminal investigation, since inspection is a procedure of investigation procedures, meaning that inspection itself is not evidence but rather a means of obtaining evidence, there are several models of security innovations of artificial intelligence technologies in the field of conducting inspection as a means of obtaining evidence in criminal evidence, including what is known as **ground-penetrating radar** to detect evidence in cases of terrorism, bombings, drugs and weapons, as well as buried corpses, and there is what is also known as **the woodpecker**, which is used remotely in cases of audio surveillance and eavesdropping through walls, doors, etc. (Awadin, 2012 : 31). And what is known as **the future police robot** that could be an alternative to police officers in the future. And there is what is known as advanced **thermal cameras** for night vision that have the ability to identify people, cars and animals from a distance and also have the ability to detect automatically. There is what is known as **the drone** in conducting inspections in mountainous and desert areas, as laws have been issued to regulate the work of these aircraft in some countries, as Law No. 4 of 2020 was issued regarding regulating the operation of drones in the Emirate of Dubai. Artificial intelligence is also used in the field of utilizing **smells** to detect crimes. In fact, what is known as **the smart corridor is being applied at the airports of the United Arab Emirates** , through which arrivals to the country can be detected by passing through the electronic gate equipped with this technology, to ensure that the passenger is not carrying any prohibited items with a smell such as drugs, explosives or weapons . (Mohammed, 2017: 22), in addition to using artificial intelligence technologies to carry out security tasks to combat crimes, **and predicting** their locations based on data on criminal gathering places and searching them, in addition to what is known as surveillance with wired and wireless devices if they are exploited by individuals for each other, or carried out by control agencies without following the procedures specified by law to carry out this work to achieve justice and arrest the perpetrators, as this constitutes several crimes of eavesdropping on telephone conversations, such as the crime of using or publishing telephone conversations and the crime of threatening to disclose telephone conversations (Al-Dhaheri, 2017: 4) .

All these capabilities help in criminal proof and uncovering crimes. Therefore, artificial intelligence technologies work through software algorithms that are given specific data, and analyze that data and come up with extremely important results that help in preparing for and preventing expected crimes . Therefore , we see the need to encourage artificial intelligence technologies in this field to reduce and prevent the criminal phenomenon, which is better than waiting for crimes to occur and punishing their perpetrators, then searching for ways to rehabilitate and reform criminals to return again as good citizens in society. Therefore, we find it necessary to adopt innovations regarding artificial intelligence in the Iraqi legal and judicial system, in addition to the necessity for the legislator to address scientific evidence, including that derived through modern technologies such as artificial intelligence, similar to what is followed in traditional forensic evidence. This is in addition to issuing a technical and legal guide on the forms and methods of obtaining forensic evidence. And scientific methods using

artificial intelligence techniques, and continuing to update these methods periodically and disseminate them to those working in the field of investigation in the field and to the judiciary . It is also necessary to carefully select the people who carry out the arrest and investigation procedures, and subject them to continuous training and educational courses on how to obtain criminal and scientific evidence using artificial intelligence techniques.

3 Procedural treatment in achieving a balance between the application of artificial - intelligence techniques and the principle of the criminal judge's conviction

Criminal evidence , in terms of achieving a balance between artificial intelligence and the principle of the judge's conviction, is subject to rules that distinguish it from other legal materials. Here, evidence in criminal proceedings acquires special importance, as in its light the fate of the accused will be determined between conviction and acquittal. Hence, criminal procedure laws have been keen to regulate the rules of evidence before criminal courts. Legal texts are the first source that regulates criminal methods of evidence in a way that does not shock the conscience of society and prevents the tyranny of public authorities. In light of the lack of legal texts regarding the legitimacy of evidence, comparative judiciary had to contribute to adjudicating the defenses presented to it by excluding evidence of conviction obtained through illegal means. The judiciary will also contribute in turn to determining the nature of the legitimacy of evidence obtained through artificial intelligence and evaluating its impact on the principle of the criminal judge's conviction . We will address this topic as follows:

3.1 The position of procedural systems on achieving a balance between artificial intelligence and the principle of the judge's conviction

Towards achieving a balance between artificial intelligence and the principle of the judge's conviction in criminal evidence, we will address it according to the position of comparative systems, with reference to judicial applications in this regard, and we have recorded that:

3.1.1 Position Anglo-Saxon systems Law and judiciary in

First: The position of English procedural law with regard to evidence obtained through artificial intelligence techniques, with reference to judicial applications in this regard: A distinction can be made in the position of the English system between the situation under the traditional rules of "common law" in UK and the situation according to the Police and Criminal Evidence Act of 1984.

1. **The situation under the rules of "common law":** In application of the rules of "common law", the only thing required for the acceptance of evidence is its connection to the incident in question. Prove it, no matter how it was obtained, even if it was done illegally. An example of this is in the 1987 case of JOFFREY V. BLACK. A person was arrested for stealing a sandwich, but the police - without Obtaining the consent of the accused or a judicial warrant for the search - they searched his residence and found hashish, and accordingly he was brought to trial on charges of illegal possession of a drug. The trial judge excluded the evidence related to the seizure of the drug, on the basis that it was obtained as a result of an illegal search, but the appeals

court overturned the ruling on the basis that the illegality of obtaining the evidence does not prevent its acceptance: the basis of that acceptance was only whether the evidence was related to the fact to be proven or not (Keane ,1996 , 47-48) .

In the R.V.ALI AND HUSSAI case , evidence derived from a wiretap of a conversation between two prisoners was admissible, on the basis that the means of using a secret informant and wiretapping private conversations are common means of detecting crimes, and that the recording does not affect the admissibility of the evidence from a legal standpoint, although it must remain within the discretionary power of the judge to be convinced (B. Lal, 2013:50) . In the R.V. STEWART case , evidence derived from a police officer's wiretapping of a conversation between two defendants sitting in an adjacent cell was admissible, and the same solution was taken in the R.V. KEETON case , where it was decided to accept evidence presented by a police officer who had obtained it from wiretapping a telephone conversation the defendant had with his wife while he was in police custody. (Hattafa, 2020:687)

2. The situation after the issuance of the Police and Criminal Evidence Law of 1984

UK: The law devoted three articles to the subject under study, which are:

A. Mandatory exclusion of illegal evidence : According to Article (76) thereof, the cases of mandatory exclusion of illegal evidence are limited to a specific assumption, which is evidence derived from the accused's confession. And the article (3/82) It codified the general discretionary power enjoyed by the judiciary in accordance with the rules of (common law). Despite the difficulty of deriving general rules from extrapolating the judicial rulings issued since the implementation of the Police and Criminal Evidence Law, it can be said in general that the rulings require that the violation be influential and fundamental.

B. for - Optional exclusion of other evidence obtained by illegal means : Article (1/78) from the aforementioned law in UK gives the court specific discretionary power to exclude evidence presented by the prosecution representative, if such evidence was obtained by illegal means. It is concluded from this, by the concept of the opposite, that the principle in English law is still to accept such **evidence** when it is influential in the proof, even if the evidence was obtained by artificial intelligence techniques and by illegal means , and that the courts have no business in how it was obtained.

From the above, we realize that the English system applies the rule of excluding evidence obtained illegally in a very flexible manner. It does not care much about the method by which evidence is obtained, even if it is obtained using artificial intelligence techniques, as long as the latter is clearly related to the fact to be proven. Although the courts theoretically have discretionary power based on their conviction to exclude illegal evidence, they do not show enthusiasm for using it except in the narrowest possible scope, whether the source of that power is the traditional unwritten rules (common law) or the Police and Criminal Evidence Act of 1984, which did not change much of the previous situation. According to that law, the court does not address the extent of the legitimacy of evidence except to measure the extent to which it may have an impact on the integrity of the trial, which the judiciary did not easily accept. This is in addition to the discretionary power that the law has retained to be exercised by the

rules of "common law" and a limited application of the compulsory exclusion of evidence represented by confessions.

secondly - The position of American procedural law regarding evidence obtained through artificial intelligence techniques, regarding judicial applications in this regard:

The American system position on the subject under discussion goes through several stages, as follows:

Stage one : American law has been following the lines of English common law , Which does not care about how to obtain evidence as long as the latter is productive in proof, which made accepting evidence obtained through illegal means a common matter, as long as the aforementioned condition was met, and the starting point in raising the problem of the legitimacy of evidence before the federal judiciary was in 1886. In a case *BOYD V. UNITED STATES* (Fellman, 1976:292) , in which the Federal Supreme Court measured the use of illegal evidence to compel a person to accuse himself, in violation of the Fifth Amendment, which provides immunity against self-incrimination, and subjected the use of illegally obtained evidence to the same ruling, but this ruling was only a passing link and did not prevent the courts from continuing to apply the rule of "common law." In 1904 , the court went on to say that any federal court may decide to accept any evidence produced in a case, without investigating how it was obtained. (Schlag , 1982:877) , and then the judiciary returned to consider the method of obtaining evidence. In another development in 1952 , the Federal Supreme Court realized the dangers of leaving the freedom to choose the exclusionary rule entirely in the hands of the states and partially reversed its previous ruling in the *WOLF* case. (Bynum , 1991:103) , stating that some searches involve such blatant excesses that evidence obtained from them must be excluded at the state level, and that they involve the use of coercion, violence, or brutal methods. While in 1961 the exclusionary rule became applicable at the state level to evidence obtained through illegal searches or seizures, as well as evidence obtained through illegal interrogations, and evidence obtained through illegal identification procedures, the scope of application was later extended to other cases in application of the Fourth Amendment to cover arrests made in a house and one of its appurtenances without a judicial warrant. (Kamiar , 1978:77) .

The scope of application of the rule of exclusion of evidence has been extended in the same direction to include cases of using modern technological means in surveillance that affect privacy, such as using thermal imaging to collect information about the home that could only have been obtained by physically breaking into the home, or using electronic surveillance devices to monitor what is happening inside the home without a judicial warrant. (Taylor Dipton , 2010:263), and in the same direction, the scope of exclusion has expanded to include not only evidence that is defective in itself, but also evidence obtained as a result of another defective procedure before it.

Among the recent rulings in this regard is what was ruled by the Federal Supreme Court in the case of *HERRING V. UNITED STATES*. 2009 , where the court noted Frankly, it is

stated that: “The mere occurrence of a violation of the Fourth Amendment does not necessarily result in the application of the exclusionary rule, as numerous exceptions have emerged that have begun to limit its application and seek to restrict it to cases of serious violations that involve bad faith on the part of the source of the violation, as well as restricting the exclusion of valid evidence preceded by a defective procedure.” (Bilal ,2013:94).

It is clear from the above that the American system has changed its position towards the rule of excluding illegal criminal evidence. After leaving the choice of its application to the states, the Supreme Court modified this position and imposed the exclusion of evidence obtained from blatant violations such as coercion and violence, or any illegal procedures. The scope of application of the rule of exclusion of evidence has been extended to include cases of using modern technology such as artificial intelligence technologies, such as its use in surveillance that affects privacy, such as the use of thermal imaging to collect information.

We conclude from the position of the two systems regarding the rule of excluding evidence obtained illegally through artificial intelligence techniques the following: The position of the English system regarding the impact of evidence obtained through artificial intelligence techniques on the judge’s conviction in criminal evidence is between the situation under the rules of “ common” law” and the situation according to the Police and Criminal Evidence Act of 1984 . In application of the first situation, the judge is not required to accept evidence except if it relates to the fact to be proven, regardless of the method by which it was obtained, i.e. even if it was done through artificial intelligence techniques, whether legitimate or not. Illegal, while the second situation is that there are cases in which the mandatory exclusion of illegal evidence is limited to a specific assumption, while there are cases in which the optional exclusion of other evidence obtained through illegal means is taken, where the court is granted discretionary authority based on his free conviction. Specifically, the exclusion of evidence presented by the prosecution representative, if such evidence was obtained illegally, and yet the evidence was accepted on the basis that its acceptance would not prejudice the integrity of the trial, according to that law, the court does not address the extent of the legitimacy of the evidence except to measure the extent to which it could have an impact on the integrity of the trial, in addition to what the law has left of discretionary power for the court. Although the English procedural legislator did not initially care about how the evidence was obtained as long as it was related to the fact to be proven, then the matter developed and the scope of the mandatory exclusion of evidence obtained illegally extended as in the confession, in addition to the optional exclusion of evidence obtained illegally, where that evidence was accepted on the basis that its acceptance would not prejudice the integrity of the trial. While the American procedural legislator initially followed the footsteps of the English legislator , the matter then developed by applying the exclusionary rule to evidence obtained by illegal means, so the exclusionary rule became applicable at the state level to evidence obtained through illegal search or seizure, and the scope of application of the exclusionary rule of evidence was extended to include cases of evidence obtained using modern technology such as artificial intelligence techniques as in surveillance that affects privacy such as the use of thermal imaging to collect information. Finally, we realize the difference between the Anglo-

Saxon systems regarding the rule of excluding criminal evidence obtained illegally, even if it was obtained using artificial intelligence techniques, between full support for building the judge's conviction in criminal evidence and absolute rejection of more flexible positions.

3.1.2 The Position of Law and Judiciary in Latin Systems

The legislative systems of Latin origin adopt the principles of freedom of proof and the self-conviction of the criminal judge, and place some restrictions on them, the most important of which is the legitimacy of the evidence. The judge must not base his conviction on illegitimate evidence. We will discuss the French, Egyptian and Iraqi procedural legislation regarding the rule of excluding criminal evidence obtained illegally using artificial intelligence techniques .

Firstly - The position of the French procedural system towards the rule of excluding evidence obtained illegally using artificial intelligence techniques in criminal evidence
The French Code of Criminal Procedure distinguishes between two types of invalidity that affect the preliminary investigation work from which criminal evidence is derived, namely: Explicit nullity , which is established by explicit texts, and in which the legislator estimates the seriousness of the violation in a way that necessarily entails nullity, and intrinsic nullity, which is nullity established as a penalty for violating essential texts . (Awadhian, 2020: 635).

In a later development, the legislator amended this binary division, according to the text of Article 171 of the French Code of Criminal Procedure, under the law of 24 August 1993 , nullity is established when the omission of a fundamental procedure provided for in the Code of Criminal Procedure, or another procedural provision, results in prejudice to the rights of the party concerned (BOULAN , 1993:12) . This new approach gives the judge broad discretion to build his conviction, not only in assessing the extent of the fundamental nature of the procedure, but also in determining whether damage has been caused in fact. Whether the nullity is explicit or subjective, its pronouncement is conditional, according to Article 802 of the aforementioned Code, on the defect having been It has caused an infringement on the rights of the person concerned (with the exception of the essential procedures stipulated in Article 105 of the Code of Procedure) (F. DEBOVE, F. FALLETI & T. JANVILLE , 2010:726). Therefore, French jurisprudence in the field of criminal evidence proceeds from the application of the rule of non-admissibility of invalid evidence or evidence obtained by illegal means, while retaining a tangible discretionary power to determine the nature of procedural violations that could lead to this effect. In application of the above, the French Court of Cassation ruled, in a ruling dated June 15, 1993 , to annul a ruling by the Court of Appeal that had refused to accept a civil suit before the judiciary. Criminal based on the fact that the civil claimant had obtained evidence supporting his claim through a violation of the confidentiality of correspondence. (Mahdi, 2003:122).

In a recent ruling of the French Court of Cassation on 14 February 2012 , it held that if a person is detained in an unlawful temporary detention and during that time makes statements incriminating another accused of theft while he was accused of concealment for which he was convicted and did not plead the invalidity of the detention, then the other accused of theft may

plead the invalidity of that procedure. The prosecution appealed the acquittal in favour of the accused of theft after accepting his plea, on the basis that a person may not plead the violation of the personal right of another accused who is detained in temporary detention, but the Court of Cassation confirmed the permissibility of the plea by a person in whose favour the invalidity was not decided, as long as his interest was affected (J.R. SPENCER & N. PADFIELD , 2012:494) . In situation in French law regarding false evidence was influenced by the provisions of the European Convention on Human Rights issued in 1950 and by the rulings of the European Court of Human Rights. Evidence must be made with respect for the principle of integrity, which has been confirmed by the Court of Cassation and the European Court of Human Rights as essential for a fair trial. In application of this in the field of evidence in criminal evidence: tricks and deceptions aimed at inducing a person to make statements that were not To be issued under different circumstances, such as imitating another voice by the investigating judge. Or the investigator makes unfulfillable promises, hears a suspect or witness under hypnosis, and records a person's conversation without his knowledge. (Al-Suwailem, 2000:36). It also excludes practices that incite the police to commit crimes, including creating a website. On the Internet, it is possible to extract free images of recordings involving child prostitution to identify those who do so for later extraction . (Awadin, 2020: 698). Therefore, the procedure requires the authorities authorized by law in accordance with the rules and limits set by the law.

Thirdly - The position of the Iraqi procedural system towards the rule of excluding evidence obtained illegally using artificial intelligence techniques in criminal evidence:

The Iraqi legislator stipulated in the Criminal Procedure Code No. 32 of 1971 the principle of the judge's conviction in criminal evidence, which takes into account the freedom of the criminal judge. Through this freedom, the criminal judge can take into account any evidence that he deems important to take into account for the purpose of revealing the truth. Article 213 (A) stipulates that: (The court shall rule on the criminal case based on its conviction of the evidence presented at any stage of the investigation or trial, which is the confession... and other evidence established by law) , and through the phrase and other evidence established by law, through the appearance of the legal text, it becomes clear that the evidence is established by the text of the law, as the previous text indicates. It is clear that the criminal judge, according to the Iraqi Code of Civil Procedure, can issue his ruling based on his own conviction, and this principle is applied before all criminal bodies. The Iraqi Federal Court of Cassation confirmed this in one of its rulings, where it confirmed the content of the freedom of the criminal judge in proof, saying: (The High Court should not have restricted itself to any evidence heard or written evidence alone, but it should have verified the case by listening to the testimonies of witnesses and reviewing its conscience regarding obtaining conviction or not, or confirming its opinion according to the results that appear to it). (Iraqi Court of Cassation Decision, 1992).

Looking at the text of Article (104) of the Iraqi Evidence Law No. (107) of 1979 as well , we find that it allows the use of advanced scientific means to prove facts, but it did not clearly define these means and made them subject to the discretion of the court of subject matter, and

without a doubt this reduces the value of these means in proving the truth. The article indicates that proof by judicial evidence is limited to what may be proven by testimony, while science has proven the accuracy of other means in proving facts, such as genetic fingerprinting and evidence obtained through artificial intelligence techniques that assist in the criminal system, and through it, the real perpetrator of the incident is identified, as it can, through its complex programming and through the use of certain algorithms, uncover the mystery in any incident, through the data it obtains. By photographing the crime scene and studying the health condition of the accused, it can prove the extent of his ability to commit the behavior that constitutes the crime or not, in a more accurate way than humans. (Akerkar , 2019:11) . But the problem is that the judge's authority to accept or reject this evidence depends on his personal conviction, and this opens the door to arbitrariness and contradiction. Therefore, we call on the Iraqi legislature to enact a new law regulating the use of modern means of proof, especially evidence or evidence obtained through artificial intelligence techniques , which are considered one of the most important and accurate means of proof in this technological era in criminal evidence.

We conclude from the position of the Latin systems regarding the rule of excluding evidence obtained illegally using artificial intelligence techniques, the following becomes clear: -

- 1- It can be said that the legislation of the Latin systems in general takes different positions on The idea of excluding illegal evidence, some of which accept the idea within a specific scope, some of which accept it within a moderate scope, and some of which expand on excluding illegal evidence, and some legislations ignore the problem in the first place, while the French Code of Criminal Procedure distinguished between two types of invalidity that taint The preliminary investigation works are: Explicit nullity , which is established by explicit texts, and in which the legislator initially assesses the seriousness of the violation in a way that necessarily entails nullity. Intrinsic nullity, which is established as a penalty for violating essential texts.
- 2- While the French judiciary in the field of criminal evidence proceeds to apply the rule of non-admissibility Invalid or illegally obtained evidence, while retaining tangible discretionary power to determine the nature of procedural violations that would lead to this effect. In the field of evidence obtained through artificial intelligence techniques, tricks and deceptions that aim to induce a person to make statements that would not have been made by him in different circumstances are excluded, such as imitating another voice, the investigator making unfulfillable promises, hearing a suspect or witness under the influence of hypnosis, and recording a person's conversation without his knowledge. The criminal legislator was also keen in the Latin systems . On the protection of the right to privacy in the field of obtaining criminal evidence, and the judiciary played an important role in establishing the foundations for excluding illegal evidence. If proof is based on the principle of the judge's freedom to form his conviction, then it is accepted that this freedom is exercised within the framework of specific restrictions, the most important of which is the necessity of forming this belief through correct or legitimate evidence.

3.2 T he value of criminal evidence by applying artificial intelligence techniques in light of the balance with the judge's conviction

In this section, we discuss the validity of evidence derived from artificial intelligence techniques, as it can be relied upon to convict and acquit on its own, or must it be supported and reinforced by other evidence in the case. We will divide this section as follows:

3.2.1 As sole or artificial intelligence technologies The role of branch The first supporting evidence in criminal evidence

Artificial intelligence techniques produce results based on science and modern technology, and the human will have no role in showing the result, except that, for example, he is the one who uses algorithms to extract the result. The evidence derived from artificial intelligence techniques may differ from the criminal evidence in its results regarding the same crime for which that evidence was presented, or the evidence may be consistent with each other, so the evidence is consistent. The court's conviction and reassurance are formed from the sum of the evidence presented in the case, which is called the term supporting evidence, which means that all the evidence presented in the case complements each other, so the evidence is consistent. (Mutawali, 2007:229), as the principle of supporting evidence is a fundamental principle in forming the judge's belief, and it is a procedural principle related to public order, the violation of which results in the invalidity of the procedures. (Ahmed, 2014:130). It is also called the principle of strengthening evidence, which means a means that contributes to the formation of judicial certainty. If the strengthening evidence is not available when strengthening is necessary, then the judge must rule in acquittal (Qandeel, 2012:229). Here, we must point out, while we are searching for the role of artificial intelligence techniques as a single piece of evidence or reinforced by other criminal evidence, that the evidence derived from artificial intelligence techniques when initiating a criminal case cannot usually be the only one to prove the conviction and convince the judge unless it is reinforced by other criminal evidence in the case. It often comes after obtaining other criminal evidence such as verbal evidence such as testimony, where the expert's opinion may support these testimonies in the case or interrogation or confession or physical criminal evidence, i.e. the traces found at the crime scene, whether at the inspection or search stage or during the autopsy and medical examination of the victim, such as finding narcotic substances, for example. Here, it is necessary to conduct an analysis to determine the type of the seized substance, as the evidence is supportive of each other in building the judicial conviction of conviction or innocence. (Sheelan, 2023:208). Where the evidence presented in the case can lead the judge to reach the conclusion of the punishable incident based on that evidence, including that derived from artificial intelligence techniques, which can be said to be dependent on evidence derived from artificial intelligence techniques with other criminal evidence. It is clear from the above that one of the manifestations of the freedom of the criminal judge in assessing the evidence, exercising his discretionary power in order to reveal the truth, is to present evidence that he is not satisfied with, and the criminal judge's lack of confidence in the value of this evidence is due either to its weak indication of the truth and its lack of support by other evidence or that there is other evidence that refutes it or that it is productive in proof, but the criminal judge has sufficient evidence to form his judicial conviction, and he also has the freedom to accept the evidence whenever he is satisfied with it, and he also has the authority to divide the evidence so that he takes the part that he finds closest to revealing the truth and rejects the part that he is not convinced of Which is not consistent with the purpose of proof. (Shelan, 2023:210).

Similarly, artificial intelligence techniques play an important and prominent role in revealing the existence of a crime or not, i.e. before starting any of the lawsuit procedures, as it is not possible to confirm the occurrence of a drug terror crime, for example, after finding the narcotic substance in a certain place, except after referring to those scientific means that determine the nature of the substance. If it turns out that the substance is ordinary and does not contain a drug, then that technology is what decides that the criminal case will not be initiated due to the absence of a crime, and vice versa, if it is proven that the substance is a prohibited drug, then the investigation and evidence collection body and the investigation body begin their work to find the accused. Thus, it can be said that those techniques are unique in determining whether or not to initiate a criminal case. (Daham, 2017: 182). Also, the certainty of the truth of the narcotic substance is not valid except through analysis, and the court of the subject matter is not to be blamed for basing its ruling on the result reached by the chemical laboratory report when it is satisfied with it. In other words, the court must adhere to the rule that evidence supports evidence, as evidence obtained from artificial intelligence techniques cannot be rejected by the judiciary except on valid grounds.

Here we see that despite the prevalence of the rule of supporting evidence, i.e. reinforcing evidence with each other, the judiciary, despite its influence on the case, cannot reject and neglect evidence derived from modern means such as artificial intelligence techniques without legal justification, which indicates its importance and influence on the case. When the judge finishes discussing the evidence obtained from artificial intelligence techniques, he places this evidence on the scale of evidence whose legal value is known and whether it is sufficient on its own for criminal proof or needs to be supported by other evidence. It is not binding on the court, as it may accept it and rely on it as evidence in the case if it is reassured by it and supported by other evidence. It may also ignore it if it does not find what leads to conviction in it. All of this is attributed to the criminal judge's emotional conviction in assessing its legal value.

3.2.2 The position of the law and the judiciary on the value of criminal evidence by applying artificial intelligence techniques

The general rules relating to criminal evidence systems allow crimes to be proven by all means. Proof means demonstrating the occurrence of the crime and identifying its perpetrator. The judge issues his ruling based on his conviction derived from the evidence that was discussed by the parties to the case. (Sharif, 2020:13), as stated in Article (213) of the Iraqi Code of Criminal Procedure regarding the principle of the judge's conviction, that the criminal judge is free to resort to all methods and means leading to forming his certain conviction of the truth, as the legislator did not limit the evidence that the judge can rely on in his ruling, otherwise it would be a violation of the principle of the judge's freedom to prove, as the principle is that the criminal judge has complete freedom to prove, unless this freedom is restricted by law or according to what is dictated by general principles, as the conviction of the proof of the fact and its attribution to the accused is not the practical method invented by reason, but it is The intellectual method adopted by the judiciary to extract the facts necessary to issue

a fair judgment (Idres, 2022:431) 'Taking into account the legal and ethical controls that preserve the rights of the accused and society.

From this standpoint, the general rule is that criminal evidence is governed by the principle of free evidence, as confirmed by Article (104) of the Iraqi Code of Civil Procedure, where we find that it allows the use of advanced scientific means in proving facts, to uncover the circumstances of the crime on which he relies in forming his conviction whenever he is satisfied with it, and it includes, according to the type of criminal evidence, physical or technical evidence or Scientific knowledge obtained through artificial intelligence techniques.

It is recognized that the judge's conviction based on evidence must be based on scientific, logical, and legal foundations, and it is not sufficient for it to be a mere personal opinion or unjustified feeling. (Amal Abdel Rahman, 2012:140), and here the controversy arises

about the acceptance of criminal evidence obtained by artificial intelligence techniques and its legal value in the judiciary and comparative law:

Legislations differed between accepting this evidence and not accepting it, and the rulings differed between supporters and opponents in their rulings on legitimacy and illegitimacy, as follows:

A- **The situation in the UK law :** The Police and Criminal Evidence Act of 1984 regulates three types of obtaining samples as criminal evidence obtained using artificial intelligence techniques, as stipulated in Article 61 of the aforementioned law, which is related to fingerprints, namely: 1- Samples from non-sensitive areas "such as a person's hair without pubic hair" and also samples without body openings. 2- Samples from sensitive areas such as samples of blood, semen, and any other fluid or tissue that comes out of the body, as well as 3- Urine, saliva, pubic hair, and samples taken from body openings.

For the first and second cases, which relate to fingerprints and non-sensitive areas, they are carried out by the police with the consent or by force of the accused. For the third case, which relates to sensitive areas, they are carried out with the approval of a police officer with the rank of "director" or higher. The reason for this is that taking a sample from a sensitive area may confirm the crime or may deny it or deny participation in it. (Mutawali, 2003:357). As for the acceptance of evidence obtained from eavesdropping using artificial intelligence techniques in England, eavesdropping was permissible and legitimate before the implementation of the Police and Criminal Evidence Law of 1984, and work was in progress before this law to obtain permission from the Minister of the Interior to eavesdrop. On telephone calls, to control serious crimes that affect state security, but the expansion of this led to an excess that included eavesdropping on all crimes regardless of their type, and regardless of the objective restrictions, which led to the European Court taking the same position it took with France in not respecting human rights within the European Convention ratified by England in 1953, which led to the issuance of the 1985 law, which is the Telephone Calls Detention Law, under which the Minister of the Interior is authorized The authority to authorize wiretapping for a limited period if there is a need to protect national security or the national economy or to prevent or detect a serious crime. The law has

organized the method of filing a complaint before a special court that considers the legality of wiretapping and the extent of its compliance with the law (Malone , 1985:239). From all this, we conclude, regarding the acceptance of evidence obtained from eavesdropping using artificial intelligence techniques in England, that : the means of obtaining it must be legitimate, meaning that the procedures followed to obtain the evidence must be following the procedures stipulated by law. If the evidence reached the judiciary through an illegitimate means, it collapses and becomes worthless.

- B- The situation in French law:** In another position, the French legislator considered genetic fingerprints as independent evidence in criminal cases, which was explicitly stated in Article 226-27 of the French Penal Code No. 98 issued in 1994 , which defined the scope of using genetic fingerprints in three cases in criminal investigations and procedures. As for taking a search sample from the accused's blood as criminal evidence obtained by artificial intelligence techniques, it is done by a doctor, as the purpose is procedural regardless of the goal, while the Supreme Court in France considered taking a blood sample from the accused by a doctor's assistant to be valid, and there is nothing wrong with taking the sample by a doctor's assistant as long as it is not taken intentionally or to harm the accused from a health perspective. (HUNERFELD , 1992:15) , and as it settled The French Court of Cassation considered the brain print as evidence that can be added to other evidence to rule on conviction, otherwise acquittal must be ruled. It also accepted that the genetic print can be relied upon by the judge alone due to its accuracy and its impact in resolving the criminal incident. (HUNERFELD , 1992:16) , while on the admissibility of evidence obtained from eavesdropping using artificial intelligence techniques in France: This situation is explained through two stages :

The first stage: is judicial legitimacy, as there is no legal text during this stage that explicitly refers to or regulates the process of eavesdropping on telephone conversations. The method of eavesdropping on telephone calls was used and its benefit appeared in drug crimes and women trafficking and before the law of July 17 , 1970, where eavesdropping on conversations that take place or take place in private places was considered a crime punishable by law in and of itself. The method of working with the legitimacy of eavesdropping on telephone conversations before the implementation of the law of July 1970 differentiated between the use of eavesdropping cases, as it is considered Wiretapping is permissible if the judge authorizes it. Therefore, if wiretapping occurs during a stage of gathering evidence, it is illegal and may not be taken into account. However, if it occurs during the investigation stage, it is considered a presumption that the judge may or may not take into account, as it is one of the presumptive evidence and not conclusive evidence. Despite the issuance of the 1970 law , the judicial rulings have conflicted in this regard, so much so that the French Court of Cassation, in a ruling in 1980 , approved the legitimacy of wiretapping with the permission of the investigating judge with the following guarantees: - "The necessity of obtaining permission from the investigating judge, in addition to the supervision of the judiciary over this permission and its implementation, and the impermissibility of wiretapping using methods of fraud and deception, and finally the impermissibility of wiretapping if it results in a violation of the rights of defense and monitoring telephone conversations between the accused and his private lawyer." (BOULOC , 2012:239) , and in a recent ruling issued by the French Court of Cassation on June 3, 2008 in appeal No. 17196-07 17147-07 “based on Article 6, paragraph 1 , of the

Convention on the Preservation of Human Rights Human and basic freedoms: “Whereas recording a telephone conversation by one of the parties without the knowledge of the person making the statement constitutes a deceptive means, which prevents its acceptance as evidence.” (Mutawali, 2013:358).

The second stage begins with textual legitimacy: The issuance of the 1970 law and the rulings issued during this period led to criticism from the European Court of Human Rights, to which France is a member. For this reason, the French law was issued in July 1991 and regulated eavesdropping with judicial permission, as well as regulating administrative eavesdropping for national security purposes. (BOULOC , 2012:239).

- C- **Status in US law:** As for taking samples from the bodies of the accused in the field of inspection as criminal evidence obtained by artificial intelligence techniques, the rules of inspection of their bodies apply to them, as this is considered a form of inspection, unless the matter relates to wounds , in which case the danger is present. Some federal appellate courts have tried to give priority to human rights and protect them in some of their rulings without discrimination, as this is contrary to the constitutional guarantees related to human rights. (Mutawali, 2003:358) . While regarding the acceptance of evidence obtained from eavesdropping using artificial intelligence techniques in the United States of America, the Fourth Amendment to the Constitution had approved immunity against search and seizure, both of which are carried out in an arbitrary manner, what the security authorities do in terms of eavesdropping is not subject to this immunity unless it is related to a material violation of the sanctity of the place, but the Federal Supreme Court backed down from that and considered eavesdropping as a type of search and therefore takes the same immunity. (Hanson , 1993:244) , and the court addressed the definition of “private conversation,” and did not take it into account . It was released and left to the customs of society to regulate it in a way that gives reasonableness. For example, protection does not extend to the accused who eavesdropped on his colleague’s call and later reported it to the police. Also, the evidence derived from eavesdropping is acceptable without judicial permission, if the eavesdropper agrees to it. However, this assumption was rejected by some legislations and jurisprudence. (MAIONE , 1985:204), where it is necessary to have a judicial authorization for eavesdropping in the cases referred to. The issue of police officers entering private places and placing eavesdropping devices in them has been raised, with some arguing that such an act is considered valid since this procedure is necessary to carry out the eavesdropping that is authorized, while others have argued that such entry to carry out eavesdropping is not permitted since it is an interference in the physical privacy of individuals. (MAIONE , 1985:230).
- D- **The situation in Iraq:** The Iraqi legislator stipulated in the Criminal Procedure Code No. 23 of 1971 that the judge’s conviction of criminal evidence obtained through artificial intelligence techniques in proof is the freedom of the criminal judge, and through this freedom the criminal judge can take any evidence that he deems important to take to reveal the truth. Article (213) / A) thereof stipulated that: (The court shall rule on the criminal case based on its conviction of the evidence presented at any stage of the investigation or trial, which is the confession... and other evidence established by law) and through the phrase (and other evidence established by law) from the apparent legal text it becomes clear that the evidence is established by the text of the law as the previous text indicates. It is clear that the criminal judge, according to Iraqi law, can issue his ruling based on his conviction, and this principle is applied before all criminal authorities. (Bilal, 2013:80) The Iraqi Federal Court of Cassation confirmed this in one of its rulings, where it confirmed the content of the criminal judge ’s freedom of proof, saying: “The High Court should not have restricted itself to any evidence heard or written evidence alone, but rather it should have verified the case by listening to the testimonies of witnesses and reviewing its conscience regarding obtaining conviction or not, or confirming

its opinion according to the results that appear to it.” (Iraqi Court of Cassation Decision, 1992). **It is worth recommending that the Iraqi legislator intervene to amend Article (213 of the Code of Criminal Procedure) as follows: “Crimes may be proven by any means of proof, and the judge shall rule based on his personal conviction unless the law provides otherwise.” .**

While the principle of (no procedure without a text) is adhered to by the criminal judge in Iraq and is considered one of the basic pillars on which modern criminal legislation is based , in order to ensure respect for human rights and basic freedoms as the real guarantee for the application of the principle of procedural legitimacy, which we can call the legitimacy of artificial intelligence techniques that are used on the accused or others to reveal the truth. Although some of them may affect the freedom and rights of those against whom this method is used, we must search for the legitimacy of these techniques and their conditions and controls. The conditions for working with evidence derived from artificial intelligence techniques in proof and the role assigned to them and for them to be effective, a set of conditions must be available that serve as restrictions for their use in the field of proof, including those related to the general conditions that must be available in all evidence, and those related to their specific conditions. For general terms, in order for evidence of artificial intelligence techniques to be considered a tool of proof and criminal evidence, a set of conditions must be met in the evidence, the most important of which are: 1- The evidence must be obtained lawfully and not in violation of the provisions of the Constitution and the Penal Code. The procedures for obtaining criminal evidence must be within the general framework set by the Constitution, otherwise, evidence obtained in a manner contrary to the provisions contained in the Constitution is invalid because it relates to public order. The evidence must be issued by free will without violating the will of the accused or others, such that the method of finding it is free from any defect that may taint that will. Therefore, that evidence is invalid if it was obtained as a result of coercion, whether material or moral, or if an error occurred to obtain it. (Azmi, 2006:419). 2- The evidence must be certain and beyond doubt, as criminal convictions are based on certainty and conviction, not suspicion and interpretation. These elements are intended for evidence that negates the presumption of innocence that is assumed for every accused person until his conviction is proven by a final judicial ruling.

As for the special conditions 1- The use of sensitive and confidential information must be limited to a narrow scope. 2- It is necessary that these technologies be affiliated with the state or under its supervision, with the obligation to provide them with security devices with high and modern technologies, and that the technical expert accredited by the court be of a high level and be known for his scientific and technical development. 3- It is necessary to implement these technologies more than once until they are approved by the judge (Al-Madani, 2022: 246).

As for the controls for working with artificial intelligence technologies, they are among the most important controls that govern working with them and they are the same controls that govern criminal evidence , because the criminal judge relies on it when he is convinced as evidence in issuing the ruling, which are: that the evidence has an origin in the case papers ,

One of the conditions for a judicial ruling is the existence of a valid claim in a real, factual dispute. It is also required that the evidence on the basis of which the ruling is issued in the case be taken from the case papers. In this regard, the Iraqi Federal Court of Cassation ruled that “the court may not base its ruling in the case on evidence that was not presented for discussion or was not referred to in the session” (Iraqi Federal Court of Cassation ruling , 2013: 225). We can conclude here that members of the judicial police must take all means to preserve evidence of the crime, including those techniques present at the crime scene, in order to preserve the physical traces therein. 2- The evidence must be derived from legitimate procedures as we have previously explained, therefore it aims to establish a basic and serious guarantee for individuals to protect their freedoms and personal rights against the arbitrariness of the authority to encroach upon them in cases other than those permitted by law to protect the social system and to the same extent achieve similar protection for the individual himself. The meaning of this rule is that evidence is considered invalid if it was obtained in a manner contrary to the law, as the legitimacy of the evidence requires the legitimacy of the procedure derived from it, and criminal procedures are the source of evidence on which the judge bases his conviction, and accordingly the acceptance of this evidence is subject to the extent of the legitimacy of the procedures that generate it (Azmi, 2006:419) .

Referring to the Iraqi Code of Criminal Procedure , we see that it has defined the legitimacy of the procedures . Including the procedures for inspection according to Articles (72 and 73) thereof, however, when the Iraqi legislator gave the right to the investigating judge or investigator to force the accused to uncover his body and take his fingerprint or a little of his blood or hair or nails or anything else that would benefit the investigation, here a question arises about this exception that the Iraqi legislator mentioned on the legality procedures? Especially concerning the blood or hair examination that is conducted through artificial intelligence techniques to detect evidence that benefits the criminal case ? Is this an admission by the Iraqi legislator of the permissibility of violating legality concerning those scientific methods specified in the text and others? Does this indicate the great value that the legislator gave to these techniques? And then their impact on the rulings issued and on the judge’s conviction? In the evidence-gathering stage, members of the judicial police must carry out their work in under provisions of the law according to Article (40 of the Code of Criminal Procedure), and the procedures through which evidence is collected are not legitimate unless they are issued by a competent person by the conditions required by the law according to Article (39 of the Code of Criminal Procedure), and in the preliminary investigation procedures during which evidence is searched for and investigated , these procedures must be by written orders issued by a competent authority, and the investigation must be neutral and impartial. As for the trial stage, the establishment of evidence is surrounded by the maximum guarantees of publicity, oral presentation, and the presence of the opponents, and any evidence previously obtained in the other stages of the lawsuit must be presented before the judge and the opponents for discussion according to Articles (152 and 156 of the fundamentals), and we conclude here that any evidence derived from other than these conditions is not legitimate, and the law does not consider it in the criminal proof process.

Finally, we conclude that the positions of comparative law and judiciary differ towards the evaluation of evidence obtained through artificial intelligence techniques by illegal means, according to a number of considerations, some of which are of a legal nature, some of which are of a social and ethical nature, and some of which are of a historical nature. From a theoretical perspective, three positions can be envisioned regarding such evidence: First: Applying the rule of excluding evidence obtained through illegal means, in a rigid and absolute manner, whereby we exclude all evidence obtained in violation of what the law stipulates, regardless of the nature of the violation. Second: Putting the rule aside and being satisfied with the evidence being related to the lawsuit or the fact to be proven, regardless of the method by which it was obtained. Third: A compromise that does not adopt a general rule for all cases, but rather reaches practical solutions determined by the circumstances of each case individually, so that evidence obtained through artificial intelligence techniques itself can be accepted “even if “Illegal” in some cases and rejected in others, depending on the outcome of the balance between the need of society to convict criminals on the one hand, and the interest of society, which requires protecting individuals against the arbitrariness of the state on the other hand.

4 : Conclusion

We conclude our study with several results and recommendations as follows:

First - Results:

1. Evidence obtained through artificial intelligence techniques in criminal evidence is the method in which electronics, modern technology and what is new thereof are used, in a place of doubt, and presented to the criminal judge to express his conviction in the proof of the criminal incident or its lack thereof, which leads to the conviction or innocence of the accused.
2. The content of evidence obtained through artificial intelligence techniques differs from forensic evidence, as forensic evidence includes: Several different elements result from a procedural process defined by law, such as the accused's confession, testimony, inspection of traces of the crime, and evidence derived from the incident, while evidence obtained through artificial intelligence techniques includes an element of the elements included in criminal evidence. This element is a technical matter and not a procedural matter. It merely proves a scientific fact, regardless of whether the report convicts or exonerates the accused.
3. It helps in fighting crime by analysing data to predict and prevent it. Its technologies include advanced detection devices (radar, thermal cameras, drones, robots) that help in collecting evidence and investigation. Therefore, artificial intelligence technologies should be encouraged in this field to reduce and prevent the criminal phenomenon, rather than waiting for crimes to occur and punishing their perpetrators.
4. In addition to the use of artificial intelligence techniques in obtaining criminal evidence, there is a warning against the risks of violating privacy through illegal methods such as illegal surveillance, which constitutes eavesdropping crimes. There are three positions in comparative judiciary and legislation towards evaluating the evidence obtained by unlawful means: First: All evidence obtained in violation of the provisions of the law shall be excluded, regardless of the violation. Second: It shall be sufficient for the evidence to be related to the claim or the incident to be proven,

regardless of the method by which it was obtained. Third: A compromise solution that does not adopt a general rule for all cases and when it reaches practical solutions determined by the circumstances of each case individually, such that the same “unlawful” evidence may be accepted in some cases and rejected in others, depending on the outcome of the balance between the need of society to convict criminals on the one hand, and the interest of society, which requires protecting individuals against the arbitrariness of the state on the other hand. We have noticed in more than one place the tendency of the judiciary and comparative law to narrow the scope of the comprehensive exclusion of evidence obtained through illegal means, even if obtained through artificial intelligence techniques, giving priority to considerations of effectiveness over considerations of rigid legality and purely scientific solutions.

Second - Recommendations:

1. We recommend that the Iraqi legislator amend Article (213 of the Principles) by adding the text as follows: “Crimes may be proven by any traditional or modern means of proof, and the judge shall rule based on his judicial conviction unless the law provides otherwise.”
2. Issuance of a technical and legal guide on the forms and methods of collecting forensic evidence And scientific methods using artificial intelligence techniques, and continuing to update these methods periodically and disseminate them to those working in the field of investigation in the field and to judicial bodies, and that the legislator address scientific evidence, including that derived from modern techniques such as artificial intelligence, in detail, similar to what is followed in traditional forensic evidence.
3. We suggest that the Iraqi legislator follow the example of the UAE legislator to regulate the use of artificial intelligence in crime detection and criminal investigations .

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