

SEARCH AND SEIZURE FOR ELECTRONIC EVIDENCE: PROCEDURAL ASPECTS OF UAE'S LEGAL SYSTEM

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Introduction

The technological revolution has caused a major challenge to various jurisdictions on how to deal with electronic evidence. This paper considers the legal problems faced by the United Arab Emirates (UAE) in relation to electronic evidence arising from the search and seizure of electronic evidence. The aim is to examine whether the UAE Criminal Procedure Law (CPL) is sufficient to govern the process of gathering electronic evidence, and whether it can stand alone or if it needs supplementary legislation. Pursuant to this matter, it is appropriate to analyse the process of searching for and seizing electronic evidence, and to look at the evidentiary rules under the UAE legal system.

UAE legal system and evidentiary rules

The UAE is a federation comprising seven Emirates, and the jurisdiction is based on civil law. Egyptian, French and Islamic law heavily influence the legal system. There are three main sources of law in the UAE: legislation, Islāmic Sharia and custom. The judiciary does not engage in law making; however, reference is sometimes made to the decisions of higher courts. The judiciary is divided into the local and federal judiciary by virtue of article 104 of the Constitution,¹ which provides that 'the local judicial authorities in each Emirate shall have jurisdiction in all judicial matters not assigned to the Union judicature in accordance this Constitution'. Consequently each Emirate deals with many legal affairs locally. Article 105 of the Constitution allows that parts of, or an Emirate's entire jurisdiction, can be transferred to the Federal

courts upon request of the Emirate. Abu Dhabi,² Dubai,³ and Ras Al Khaimah⁴ decided to establish and maintain their own judicial systems, which therefore are not dealt with federally. Regional or Federal UAE courts are similar to most other courts and are divided into criminal and civil courts. The Sharia court is a separate third division, which was initially created in order to adjudicate personal disputes. Both criminal and civil courts have a Court of First Instance, Court of Appeal, and Court of Cassation, the latter having the same status as the Federal Supreme Court of the UAE.⁵

Federal laws are applied in the courts of the UAE, and local courts apply federal laws first, that is the Civil Code or Criminal Laws. In areas where there are no Federal laws, the emirs of Abu Dhabi, Ras Al Khaimah and Dubai pass laws and issue decrees.

Each of the three courts, the Court of First Instance, the Court of Appeal and the Court of Cassation, requires a different number of judges to hear a case. The Court of First Instance is presided over by one judge; the Court of Appeal is presided over by three judges and the Court of Cassation is presided over by five judges. The highest court in the UAE is the Federal Supreme Court, which is also presided over by five judges.⁶ There are only Courts of Cassation in three emirates: Abu Dhabi, Dubai and Ras Al Khaimah, whilst in the other Emirates these cases are heard by the Federal Supreme Court, the latter one only dealing with issues of law.⁷ The lower court has to adhere to the legal principles and decisions developed by the Federal Supreme Court and the Court of Cassation. It is, therefore, appropriate to consider the role of the judge in admitting evidence in the UAE.

1 *Constitution of the United Arab Emirates (as amended 1996)* 2 December 1971, available at: <http://www.refworld.org/docid/48eca8132.html>.

2 *Law of 1968 concerning the establishment of Abu Dhabi Courts and amendment Law No.*

23 of 2006.

3 *Law of 1971 concerning the establishment of the Ras Al Khaimah Courts and amendment Law No. 3 of 2011.*

4 *Law of 1970 concerning the establishment of the Dubai Courts.*

5 *Article 95 of the UAE Constitution.*

6 *Article 96 of the UAE Constitution.*

7 *Article 99 of the UAE Constitution.*

Determining the judges' role in admitting evidence under the legal system of the UAE

In the UAE, the judiciary has the power to identify and accept evidence according to the case before them. The crimes and the remedy are identified and explained by the law. In criminal proceedings, evidence helps to identify the wrong that has been alleged. It provides contacts to the accused and substance of the criminal act. Moreover, it demonstrates the relationship between the accused and the evidence. The court's obligation is to implement and interpret legislation. Judges can reach a verdict via any evidence.⁸ Any method can approve the crime under the UAE criminal system. This is the general rule of the system. This evidential freedom enables judges to decide what is considered to be a more authentic manner to reveal the truth.

The doctrine is that judges may not determine a case based on personal belief, opinion or emotions. The rules of law have to be followed by judges in reaching decisions. The decisions are to be based on logical justification. The Court of Cassation may not challenge the way in which the judges decide decisions, as it is not in their capacity to review the decision. Nevertheless, the court will consider whether the judge has followed the precedents and made a logical judgment. Although a judge is not required to provide a justification for his understanding, he is responsible for supporting his decisions with inferences. A judge is required to provide information about the previous decision that he used as a precedent to reach his judgment. There is no need for a judge to provide the details of why he or she has used that evidence. For the decision, a judge is not bound to establish facts, but it is his responsibility to provide evidence to support his conclusion. At all grades, in dealing with criminal matters, the judiciary is bound by the doctrine of freedom of proof and judicial understanding in reaching their decisions.

Section 209 of the CPL provides the judge with the power to identify which evidence is to be considered material to the case. The Emirates Federal Supreme Court applied section 209 when it held 'In criminal proof, the judge has the ultimate power to take any evidence from any source to reach the truth ...'.⁹ Accordingly, in the UAE Federal justice system, the judge must appraise the

evidence and, further, the judge must evaluate whether any contravention of the law has taken place such as to render the evidence inadmissible.

The principles on which judges' conclusions are based are also used in trials and by other judges. This helps judges to assess, through using their own knowledge of presiding over legal proceedings, whether the evidence is obtained from reliable sources. The decision noted down by the judges in the court is to be based on truth and fairness. To bring a case into court, judges are required to obtain evidence, which provides affirmation about the appropriateness of the evidence for the prosecution. Section 179 of the CPL provides that 'the court may of its own accord, during the examination of the case, order the producing of any evidence deemed necessary to reveal the truth'. It is the duty of a judge, before convicting an alleged perpetrator, to scrutinize the evidence and check that it is sufficient to find a person guilty of the crime.¹⁰ During the prosecution stage, all doubt relating to the evidence to find the perpetrator guilty would be interpreted.¹¹ For evidence to be acceptable in any case, it must, in essence, be legitimate and judicially acceptable.

To build a case on the evidence, it is important to present that evidence in the court during the proceedings. According to the provisions of article 209 of the CPL, the case document must include the evidence that is presented before the judges during the course of the trial.¹² The evidence is collected at the interrogation, trial, and investigation phases respectively. Having such security measures in place confirms that judges have made decisions in the light of professional learning, not on personal knowledge. With this principle in place, the importance of oral pleading is enhanced, as judges will arrive at their decisions and obtain understanding from the evidence unveiled before the court. The oral pleading are conducted before the parties to a case.¹³ Therefore, the judges need to be given training on how to appraise new varieties of evidence, for example electronic evidence.

The UAE's legal position is somewhat similar to the situation in civil law jurisdictions. For example, in some jurisdictions, judges are generally permitted to use all types of proof,¹⁴ as demonstrated in the following examples. In France, article 427¹⁵ of the Code de procédure pénale provides:

⁸ Article 99 of the UAE Constitution.

⁹ UAE Federal Criminal Case of Supreme No 50/2011, unpublished.

¹⁰ UAE Federal Criminal Case of Supreme No 10/2011, unpublished.

¹¹ UAE Federal Criminal Case of Supreme No 211/2010, unpublished.

¹² The Court of First Instance is presided over

by one judge; the Court of Appeal is presided over by three judges and the Court of Cassation and the Federal Supreme Court is presided over by five judges.

¹³ Articles 165 to 170 of the Criminal Procedural Law.

¹⁴ See the relevant jurisdictional chapters for more detail in Stephen Mason, *gen ed*,

International Electronic Evidence (British Institute of International and Comparative Law, 2008).

¹⁵ Unofficial translation. Modifié par Loi 93-1013 1993-08-24 art, 28 JORF 25 août 1993 en vigueur le 2 septembre 1993.

'Hors les cas où la loi en dispose autrement, les infractions peuvent être établies par tout mode de preuve et le juge décide d'après son intime conviction.'

Le juge ne peut fonder sa décision que sur des preuves qui lui sont apportées au cours des débats et contradictoirement discutées devant lui.'

'Except where the law provides otherwise, violations may be established by any mode of proof and the judge decides by his personal conviction.'

The court may not base its decision on evidence that it made during the discussions and contradictory submissions discussed before him.'

In Italy, article 192(1) and (2) of the Codice di Procedura Penale¹⁶ provides:

'Valutazione della prova.'

1. Il giudice valuta la prova dando conto nella motivazione dei risultati acquisiti e dei criteri adottati.
2. L'esistenza di un fatto non può essere desunta da indizi a meno che questi siano gravi, precisi e concordanti.'

'Evaluation of the test.'

1. The judge evaluates the evidence giving an account in the reasoning of the decision and the criteria used.
2. The existence of a fact cannot be inferred from evidence unless it is serious, precise and consistent.'

In Germany, § 261 of the Strafprozeßordnung (StOP), provides:¹⁷

'Über das Ergebnis der Beweisaufnahme entscheidet das Gericht nach seiner freien, aus dem Inbegriff der Verhandlung geschöpften Überzeugung.'

'Free Evaluation of Evidence'

The court shall decide on the result of the evidence taken according to its free conviction gained from the hearing as a whole.'

It is for the judge to measure the extent to which the proof can be relied upon. The selection of the type of evidence by the parties is therefore unfettered, regardless of whether the evidence is in physical or in electronic form. In contrast, in the common law jurisdictions, complex rules exist to govern the evidence, based on both statute and case law.¹⁸

To summarise, to accept evidence in a case, a judge's professional knowledge and understanding plays a vital role. The only disadvantage in this field is that judges, prosecutors and lawyers have insufficient knowledge of the various aspects of electronic evidence and how to utilize information technology. Fewer chances for election are available to those judges who cannot use computers and who are not up-to-date with technological developments. The courts in the UAE do not have equipment to evaluate electronic evidence. There are no standards provided by legislation or the judiciary against which evidence obtained can be compared. The UAE courts also lack relevant rules, which make the regulation of electronic evidence very difficult.

Hence, a better understanding of electronic evidence is pivotal to reinforce law enforcement, and this also requires systematic and modern methods to identify criminal behaviour and to gather evidence, so that perpetrators can be brought to justice. In this context, it is particularly important to clearly confirm that electronic evidence has been gathered in correct way, including for the purpose of criminal proceedings. The gathering of electronic evidence is very different to the traditional seizure of physical goods by the police, and requires relevant technical expertise, therefore it is important that only skilled digital evidence specialists are involved, and that standard procedures are followed in order to ensure that electronic evidence is more difficult to challenge and to be declared inadmissible.¹⁹

International co-operation is also pertinent, as very often web sites, which may be used to commit crime, are often located outside the UAE. Hence it is desirable to adopt global procedures, similar to those regional measures such as the European Council Directive on Cybercrime,²⁰ because this will enhance the ability of electronic evidence to be secured, collected and exchanged more easily. This will allow that a globally

¹⁶ Unofficial translation. Adjusted to 16.04.2013.

¹⁷ Translation by the Federal Ministry of Justice, available at <http://www.iuscomp.org/gla/statutes/StPO.htm#261>.

¹⁸ For which see Stephen Mason, *gen ed*, *Electronic Evidence* (3rd edn, LexisNexis

Butterworths, 2012) for the following jurisdictions: Australia, Canada, England & Wales, European Union, Hong Kong, India, Ireland, New Zealand, Scotland, Singapore, South Africa and the United States of America.

¹⁹ See generally Arthur J. Cockfield, 'Towards

a Law and Technology Theory', (2004), Volume 30, number 1, *Manitoba Law Journal*, pp 383-399.

²⁰ *Convention on Cybercrime*, (Budapest, 23.XI.2001).

harmonised approach can be pursued, as all countries are affected in similar ways by cybercrime.²¹

It would be very useful to have clearly defined rules about electronic evidence, which specifically deal with electronic evidence, including the collection, presentation, preservation, and how to assess weight. It will also be helpful to have agreed standards for the electronic equipment that is used to copy electronic evidence. All of this would strengthen the integrity of the criminal justice system.²² Hence, the adoption of a particular legal framework for crimes, as well as best practice guidance for the investigation and prosecution, for example up-to-date handling, maintenance and archival procedures,²³ as well as procedures on how to present evidence in court, are all significant elements in dealing with criminal acts involving electronic evidence.

Determining the role of the parties in providing evidence under the legal system of the UAE

Under the Federal laws of the UAE, all facts must be proved by evidence. In criminal proceedings, the prosecutor must prove the case beyond any reasonable doubt.²⁴ She or he must also establish that the accused intended to commit the crime. Section 5 of the CPL provides that 'The public prosecution is part of the judiciary; it investigates crimes and directs indictments in accordance with the provisions of this Law'. Section 7 also provides that the public prosecutor shall initiate and proceed with the lodging of the criminal action. In fact, the burden of proof in criminal proceedings alters between the parties, much as it does in other jurisdictions, since section 179 of the CPL provides that 'The court may of its own accord, during the examination of the case, order the production of any evidence deemed necessary to reveal the truth'. The Emirates Federal Supreme Court applied this section when it held '... the judge has a power to search for evidence to prove the fact'.²⁵ In criminal cases, the defendant is not requested to present evidence to prove his innocence: the prosecution must establish evidence against the defendant. In contrast, the defendant has the right to challenge the evidence and present his own evidence to refute contentions that he committed the alleged acts.²⁶

Search and seizure for electronic evidence: procedural aspects of the UAE legal system

In the UAE, the procedures with regard to the investigation and gathering of evidence are provided by Part III of the CPL. Chapter 1 explains the process of investigation; section 30 explains the gathering of general information about crimes and evidence by the police; section 35 explains the reporting of crimes, and section 36 explains the documentation procedures. Chapter IV outlines several provisions that give powers to the police to search and seize evidence under the supervision of the prosecutor. Sections 51, 52, 53, 54, 55, 56, 57, 58, and 59 explain the search for evidence, sections 60 and 61 explain the seizure of evidence. All these procedures make up the general rules for all crimes and do not offer any guidelines with regard to best practise. In other words, they cover traditional crimes such as theft, rape and murder as well as crimes involving the use of information technology.

Search and seizure for electronic evidence: with a warrant

If a person is accused or suspected of a crime, it is important for the investigator to present suitable evidence against the person. His home or office may be searched to establish if there is any incriminating evidence against him. In the case of the presence of considerable evidence of proof of the crime, the evidence of the crime must be confiscated.²⁷ After seizing the evidence, the investigators must put all the devices in a bag, seal it, and sent it to the laboratory.

In line with the CPL, upon receiving the report from the complainant, the police investigator will search and seize the suspect's computer for data recovery purposes. Section 30 of the CPL provides that '... the judicial police shall inquire about crimes, search for their perpetrators and collect the necessary information and evidence for investigation and indictment.' Police search and seizure must be carried out properly, because it determines the admissibility of any evidence presented in court.²⁸ Thus, before any search or seizure for evidence can be carried out, the police investigator must take into consideration that he needs to obtain a search warrant, as set out in CPL

21 P. I. Yong, *New China Criminal Legislations in the Progress of Harmonization of Criminal Legislation against Cybercrime*, Wuhan University China, (December 2011), p 5, available at http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/documents/countryprofiles/Cyber_cp_china_Pi_Yong_Dec11.pdf.

22 P. I. Yong, *New China Criminal Legislations in the Progress of Harmonization of Criminal*

Legislation against Cybercrime, p 4.

23 Stuart Cameron, *Digital Evidence (FBI Law Enforcement Bulletin, August 2011)* – note his references, available at <https://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/august-2011/digital-evidence>; see also Stephen Mason, gen ed, *Electronic Evidence*, chapter 3 for further discussions and additional references.

24 A reasonable doubt was referred to a

doubt which makes one hesitate as to the correctness of the conclusion that was reached.

25 UAE Federal Criminal Case of Supreme No 75/2011, unpublished.

26 Article 2 of the UAE Criminal Procedure Code.

27 Article 75 of the CPL.

28 In any event, for the evidence to be admissible, it must be judicial and legitimate.

section 53: 'The judicial police officer may not inspect the dwelling of the accused without a written authorization from the public prosecution unless the crime is in the process of being committed and there are strong indications that the accused is hiding in his house, objects or papers which may lead to the truth ...'. This section provides that any search for evidence requires a search warrant from a public prosecutor.

The CPL outlines several requirements for obtaining a search warrant. Committing a crime is the first step of evidence.²⁹ The commission of a crime gives the prosecution the assurance that a crime has occurred to be investigated. Moreover, the crime committed must be of a grave nature and punishable. A search warrant cannot be obtained where no crime has been committed.

Hence, to issue a search warrant, the crime must be categorized as a felony or misdemeanour. To support the decision, a crime must be categorized as a misdemeanour and incur a prison sentence. The criminal law of the UAE classifies punishments into three categories:

1. Felonies, punishable by three years or more of imprisonment, or by death.³⁰
2. Misdemeanors, punishable by a minimum of one week to three years in prison, or by a fine not exceeding 1000 Dh.³¹
3. Petty misdemeanors, punishable by a minimum of 24 hours to 10 days in prison or by a fine.³²

It is important to draft and execute the search warrant in the light of the requirements of the electronic evidence. Hence, the officer involved in the process must take great care when applying for a search warrant.

The subject of search warrants

Normally, search warrants are meant for searching and seizing physical items. Regarding the seizure of evidence, the CPL does not mention the requirement to provide a list of things that have to be seized. This is possibly due to the nature and scope of the CPL, in that it covers crimes in a general sense. Section 61 of the CPL provides that '... the judicial police officers have to sequester the objects which may have been used in the perpetration of the crime, resulted therefrom or if the crime has been committed thereon; in addition to whatever may lead to the truth in the matter'. Taking into account the broad

scope of section 61 of the CPL, it can be said that an electronic device may be seized pursuant to a search warrant.

As a result, the seizure of materials outside of the search warrant will not entirely negate the seizure. However, it is suggested that because electronic evidence can be found on physical items such as CDs, diskettes and computer hard drives, this justifies the seizure of such physical items for further investigation to follow the electronic trail associated with the gathering of additional evidence.

The other issue, of what to seize, can be compounded when an entire computer system or a computer is linked to a network and the sources of electronic evidence exists in a number of different geographical locations. For instance, it will probably be necessary to establish the number of computers on a network, and the different types of network connections, such as the internet, e-mail, cellular data networks and wireless connections. In addition, it may also be necessary to establish whether or not there are any third party services on the internet that are used to store data remotely. Data can be deleted on the remote server before it can be captured.

Scope of the search warrant

The sphere and influence of the items to be searched and liable to be seized are defined by the search warrant. The law enforcement officers describe the evidence and materials that are the subject of the search warrant. These officers can confiscate only what the search warrant authorises.

Different search warrants are issued to secure the two different classes of evidence, hardware and software. For instance, the distinction is made in the case of hacking of a computer system. The hardware cannot be regarded as criminally illegal, of evidential use or instrumental in the criminal act. The hardware is merely a storage compartment for the crime. In such circumstances, investigators should obtain search warrants to form mirror copies of such hardware, rather than confiscating it.³³

The obtaining of evidence is difficult only when the evidence to be searched for is part of a complicated network, as in the case of a local area network. No doubt it is not a difficult task for an investigating officer to seize the entire system. In fact, it is quite easy to confiscate the entire infrastructure, network, peripherals and

²⁹ Article 72 of the CPL.

³⁰ Article 28 of the UAE Federal Penal Code.

³¹ Article 29 of the UAE Federal Penal Code.

³² Article 30 of the UAE Federal Penal Code.

³³ US Department of Justice, *Computer Crime and Intellectual Property Section Criminal*

Division, Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations, 2009, p 43.

PC-workstations, but this will affect the business or the offices of the organisation – to such an extent that the business might cease.³⁴

With regards to where the authorities may conduct the search and seizure process, section 51 of the CPL states ‘... Inspection means the search of the body, clothes or luggage for any trace or things related to the crime or required for the investigation’. Thus, the police investigator is allowed only to search a suspect’s body, clothes or luggage or things. The word ‘things’ in section 51 of the CPL is defined widely enough to cover everything in any form. Therefore, the police investigator can search a computer to find electronic evidence because the computer falls within the scope of the word ‘things’.

The main question arising from this situation is the viability of computer software to inspection. Due to the wide scope of the word ‘things’ in section 51 of the CPL, it can be said that computer software can be inspected. However, from 1992 (the date of issue of the CPL) to 2012, the provision has not been tested. Nevertheless, the word ‘things’ needs to be clearly established because different interpretations will result in different outcomes in determining whether it includes electronic evidence.

On a separate but related note in relation to data in encrypted form, for the purposes of investigation, an alleged perpetrator is required to provide the pass codes of his lockers and his computer system to the authority. There are different approaches. The first is when the person who is held against charges is not liable to provide his security codes, but to provide facsimiles of the documents stored in his computer. The second approach is that in which the accused has to give the security information of his safe only if legitimate orders have been issued from the court. The second approach is of great importance as it helps to obtain passwords, which are used to obtain information during the investigation. This rule is applied where information is kept safely in the safe, but not on password protected information held in electronic format.

Execution of the search warrant

In the UAE, search warrants can only be incorporated and implemented by the prosecuting officer. It is for the public prosecutor to conduct the search warrant personally, or to give it to the investigation officer and

the police officers enlisted in article 33 of the CPL. Where the public prosecutor hands the execution of the warrant over to police officers, it will be obligatory upon these officers to follow the warrant and execute the procedural instructions of the public prosecutor. Moreover, they must execute the warrant under the rules of law, within the scope, and in a given time. Under UAE statutory law, there are no time limits for search warrants; the search time will be defined by the public prosecutor when issuing the authorization to search.

The CPL authorises police officers to search and seize evidence because they represent the competent authority. However, searching and seizing electronic evidence requires not only an authorised person, but also a more qualified person.

The CPL outlines several provisions which authorise the police to report criminal cases, gather information, take statements, carry out searches of premises and equipment, seize evidence, execute summons and warrants and conduct prosecutions. There are no rules in the UAE which require a qualified digital evidence specialist to be with the police officer when searching for electronic evidence. Thus the loss of electronic evidence could be very possibly due to lack of experience or skill.

Search location

Today computers have emerged as an important constituent of a person’s life. Everyone ranging from individuals and organizations to the public and private sector are dependent upon computer systems to perform their day-to-day activities. For instance, certain activities like financial transactions, communications, and internet-based social events, banking, shopping, social networks, entertainment and education are performed via computers. Police officers often remove hardware devices such as CDs and floppy disks, to perform an off-site examination of a crime scene.

Consequently, most of the searching and confiscating processes have both a specific and a general effect on the person or organisation that is the subject of a search. In such circumstances, it becomes difficult for the police officer to conduct on-site and off-site searches for an extended period time. Consequently, the site of a search tends to present practical difficulties in performing a search.³⁵

³⁴ This is a significant topic, and the reader might begin by considering the following US technical texts, as well as relevant practitioner texts written by lawyers: Eoghan Casey, *Digital Evidence and Computer Crime Forensic Science, Computers and the Internet* (3rd edn, 2011); Carl J. Franklin, *The Investigator’s Guide to Computer Crime,*

(Charles C Thomas Publisher, 2006); Ralph, D. Clifford, *Cybercrime: The Investigation, Prosecution and Defense of a Computer-Related Crime*, (3rd ed, Carolina Academic Press, 2011).

³⁵ Some of the problems are illustrated (amongst other authors) by Anthony Reyes, Richard Britton, Kevin O’ Shea and Jim

Steel, *Cyber Crime Investigations Bridging the Gaps Between Security Professionals, Law Enforcement, and Prosecutors* (Elsevier/ Syngress, 2011); Susan W. Brenner & Barbara A. Frederiksen, ‘Computer Searches and Seizures: Some Unresolved Issues’, *8 Michigan Telecommunication and Technology Law Review* 39 (2002).

The UAE public prosecution have greater authority to execute search warrants. They are authorized to decide the place of a search and whether it should be done on-site or off-site.³⁶ In practice, the affect of searching and seizing electronic evidence on businesses and third parties is ignored under the prevalent searching procedures in the UAE. This is because of the lack of limitation upon the authority of the investigating officer. The execution officer is regarded as the leader and expert in assessing the relevant methods to execute the search warrant under the CPL.

Consequently, it is important to give the issue its due importance rather than abandoning it. No doubt the UAE-based investigating officers may continue to enjoy the authority to create a mirror copy and other crime scene evidence for a detailed search. However, at the same time, this authority should be situation specific. It should not be applied in impractical situations under which it is impossible to perform a site-based digital search. It is important for law enforcement officers to demand off-site search permission in their search warrants. Justifiably, this search may be done on the grounds that the crime scene search is usually less achievable and because of the absence of any other relevant method. The concisely designed criminal procedural laws serve as a basis for a more effective and efficient crime investigating method. The reason behind this is that it underscores the new quality of evidential searches. Conventionally, in the case of obtaining electronic evidence, most of the searching and confiscating rules become inappropriate and inapplicable. Italy, Belgium or France -based investigating procedures can serve as a role model for the UAE electronic searching techniques, so they may gain assistance from them for effective search and confiscation of evidence.

Search and seizure for electronic evidence: without a warrant

There are exceptions to obtaining a warrant for the search and seizure of evidence. In line with the CPL, the police are allowed to enter the suspect's premises and search for relevant materials without the provision of a search warrant. These circumstances are provided for in section 53 of the CPL: '... the crime is in the process of being committed and there are strong indications that the accused is hiding in his house objects or papers which may lead to the truth'. In this situation, the police

officer does not need a search warrant. The second exception provided for in section 54 of the CPL covers the situation in which '... the judicial police officer, even in cases other than a crime that is in the process of being committed, may inspect dwellings of persons put under surveillance, either according to a provision of law or a decision by a judge, should there be strong indications that they may be suspected of perpetrating a felony or a misdemeanour'.

Searches conducted without warrant that includes the confiscation of electronic evidence is not entertained in the CPL. For historical objects, law enforcement officers and public prosecutors are bound to follow the law for warrantless searches. An example is where the wrong key is put in the lock, and the key fails to open the lock. There are no circumstances, for instance, when there is authority to seize data where the data is threatened with being lost. There are no options available to avoid the destruction of software and hardware components. Digital material gets more vulnerable due to searches through digital media.

Conclusion

This paper has provided details of the rules for gathering electronic evidence under the Criminal Procedure Law in the UAE. It is questionable whether the UAE Criminal Procedure Law is sufficient to govern the process of gathering electronic evidence. It is suggested that the procedures for gathering electronic evidence under the CPL must be complemented and supplemented by other rules to provide an efficient working procedure with regard to crime detection and investigation. The CPL cannot stand alone or remain static, and it needs to be reviewed, particularly regarding the right of search and seizure for electronic evidence. This is because any shortcomings in the process of investigation will result in a failure to prosecute a case. Therefore, it is necessary to amend the rules for search and seizure of electronic evidence. The case for amending the CPL is now of paramount importance. Amending the rules will enhance the administration of the criminal justice system in the UAE. Furthermore, the UAE government must play a pivotal role by providing more skilled digital evidence specialists and law enforcement officers.

In short, the UAE needs to find a specific set of principles or rules dealing with the search and seizure of electronic evidence. Until it has achieved this objective,

³⁶ Article 53 of the CPL.

it is highly recommended that the UAE government adopt the proposed international principles for procedures relating to electronic evidence drawn up by the Association of Chief Police Officers in the UK 'Good Practice Guide for Computer Based Evidence (ACPO, 2012)'. These principles can be used as a guideline to ensure more effective procedural laws relating to the gathering of electronic evidence.

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