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Uses of artificial intelligence in litigation to ensure a fair trial

استخدامات تقنية الذكاء الاصطناعي في التقاضي لضمان محاكمة عادلة

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Abstract:

The practical application of remote litigation technology within the Algerian judicial system has faced numerous challenges. Perhaps the most significant is the accusation that it undermines fundamental principles of a fair trial, such as the principles of transparency, in-person attendance, and the right to defense, particularly when using remote videoconferencing technology in investigations and trials. The accused is heard through advanced technological means as an alternative to the physical presence of the accused or witness, which has sparked widespread controversy in the judicial community regarding the constitutionality of this mechanism and its guarantee of the principles of a fair trial guaranteed by law, especially in light of the absence of the accused and the replacement of his physical presence with a virtual electronic presence. In this regard, Algeria has ratified international agreements such as the United Nations Convention against Transnational Crime and the United Nations Convention on the Law of the Sea. The Algerian legislature also enacted the Law on the Modernization of Justice on 15/03, dated February 1, 2015, although this law was not the first of its kind.In its provision for the electronic litigation mechanism, Article 56 bis 27 of Law 15/02, which includes the Code of Criminal Procedure, was the first to stipulate this mechanism.

Keywords: *litigation - trial - electronic - accused - fair.*

الملخص:

إنّ استخدام تقنية التقاضي عن بعد على مستوى أجهزة القضاء من الناحية التطبيقية في الجزائر قد لقي العديد من الصعوبات. لعلّ أبرزها اتهامه بالمساس بالمبادئ الأساسية للمحاكمة العادلة كمبدأ العلنية والحضورية وحق الدفاع، خاصة عندما يتعلق الأمر باستخدام تقنية المحادثة المرئية عن بعد أو في التحقيق والمحاكمة حيث يتم سماع المتهم عبر وسائل تقنية متطورة كبديل للحضور المادي للمتهم أو الشاهد وهو ما أثار جدلا واسعا في الوسط القضائي وفي مدى دستورية هذه الآلية وضمانها لمبادئ المحاكمة العادلة المكفولة قانونا خاصّة في ظلّ غياب المتّهم واستبدال حضوره المادي بالحضور الإلكتروني الافتراضي. وفي هذا الصدد، صادقت الجزائر على الاتفاقيات الدولية كاتفاقية الأمم المتحدة لمكافحة الجريمة عبر الوطنية و كذا اتفاقية الأمم المتحدة لقانون البحار. كما جاء المشرّع الجزائري بقانون عصرنة العدالة في 15/03 المؤرخ في01 فيفري 2015 إلاّ أنّ هذا الأخير لم يكن السبّاق في نصّه على آلية التقاضي الالكتروني فالمادة 56مكرر 27 من القانون 15/02 المتضمن قانون الاجراءات الجزائية كانت السباقة في نصها على هذه الآلية.

الكلمات المفتاحية: التقاضي، محاكمة، الالكتروني، المتهم، عادلة.

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Introduction:

A fair trial is one of the fundamental guarantees of criminal justice. It can only be achieved when conducted before an impartial and competent judge, in full respect of the rights of defense, and free from coercion, humiliation, or torture. With the digital transformation reshaping justice systems worldwide, electronic or remote litigation has emerged as an innovative mechanism designed to streamline procedures and enhance access to justice.

Yet, in Algeria and across the Arab world, the practical implementation of this mechanism has raised wide debate regarding its compatibility with the constitutional principles of fair trial—particularly the principles of publicity, in-person presence, and the defendant's right to face their accuser.

The Algerian experiment in this field began in 2017, first at the *Court of Kolea*, and later expanded following the COVID-19 pandemic through the establishment of digital platforms enabling online litigation and the electronic exchange of pleadings. Despite the efficiency, flexibility, and cost reduction that these innovations bring, they also raise essential questions about ensuring fair trial guarantees in the context of virtual participation.

This calls for a careful legal analysis of how these technologies fit within the Algerian judicial framework and how they compare to other Arab legislations, such as Jordan, which formally adopted remote trials under the Code of Criminal Procedure and the Modern Technical Means Regulation of 2018.

Research Problem:

To what extent does electronic litigation contribute to achieving and ensuring the principles of a fair trial—particularly concerning the right of defense and the principle of in-person confrontation? Moreover, has the Algerian legislator successfully reconciled the requirements of digital justice with the guarantees of traditional criminal justice?

Objectives of the Study:

This study aims to:

1.Identify the legal and legislative foundations governing electronic litigation in Algeria and selected Arab countries.

2.Analyze the compatibility of remote litigation mechanisms with the constitutionally and internationally recognized principles of a fair trial.

3.Explore the practical advantages and risks of electronic litigation concerning the rights of defendants and defense attorneys.

4.Propose legal reforms that ensure a balance between modernization and the protection of human rights.

Methodology:

This research adopts a comparative analytical approach, analyzing both national and international legal texts, and comparing the Algerian experience with similar Arab judicial frameworks. The descriptive method is also employed to trace the technological

developments and the practical implementation of remote litigation within the judicial system.

Accordingly, this paper is divided into two main sections:

* Section One: The activation of electronic litigation mechanisms within the judicial system.
* Section Two: The implications of electronic litigation for ensuring the defendant's right to a fair trial.

Section I:
Activating the Mechanism of Electronic Litigation within the Judicial System

The adoption of electronic litigation represents a qualitative leap within judicial institutions. Many Arab and European countries, including Algeria and Jordan, have embraced this system with the aim of expediting judicial procedures and overcoming the shortcomings of the traditional system—particularly its slowness, which has long burdened both judges and litigants, making it difficult to resolve cases within reasonable time limits.

In Algeria, the activation of electronic litigation has been applied at two levels:

- Criminal Justice (A)
- Civil Justice (B)

A- Activation of Electronic Litigation within Criminal Justice:

Similar to Jordan, the Algerian legislator has incorporated several innovative technologies into criminal proceedings to ensure the effectiveness of electronic litigation. These include remote trials and electronic monitoring through tracking bracelets, both of which aim to secure fair trials while facilitating judicial efficiency.

Accordingly, this subsection is divided into two points:

- The use of remote videoconferencing technology.
- Electronic monitoring mechanisms.

1- Remote Videoconferencing Technology :

Neither the Algerian nor the Jordanian legislator has provided a specific definition for videoconferencing in trials. However, Article 1 of the UAE Law on the Use of Remote Communication Technology defines it as:

"An audible and visible conversation between two or more parties, conducted through modern communication tools to enable participation remotely."The same article defines remote procedures as criminal procedures related to the investigation, evidence collection, or trial conducted through remote communication technologies[1].

In Algeria, Law No. 15-03 on the Modernization of Justice introduced the use of videoconferencing within judicial procedures. The law established an integrated system for automated data processing under the supervision of the Ministry of Justice and its affiliated judicial institutions.

Specifically, Chapter IV of the law allows the hearing and interrogation of parties via videoconferencing while preserving the procedural rights enshrined in the Code of Criminal Procedure[2].

This innovation reflects the Algerian judiciary's commitment to adopting modern tools to facilitate judicial communication without compromising the defendant's fundamental rights.

2- Electronic Monitoring:

The electronic monitoring system was formally introduced into Algerian law through Article 15 bis of Law No. 18-01, which complements Law No. 05-04 on the organization of prisons and the social reintegration of inmates.

Under this article, electronic monitoring involves requiring the convicted person to wear an electronic bracelet for the duration specified in Article 150 bis 1, allowing authorities to track their location and ensure their compliance with residence restrictions established by the enforcement judge.

This system serves as an alternative measure to short-term imprisonment or pretrial detention. It reflects a modern penal policy based on technological progress and the humanization of punishment, aiming to reintegrate offenders while reducing prison overcrowding.

The Algerian legislator established comprehensive provisions regulating the initiation and termination of electronic monitoring under Law No. 18-01[3], reinforcing its legal and procedural foundations.

Article 150 bis clearly states that *electronic monitoring allows the convicted person to serve all or part of the sentence outside the prison facility.* This means that the legislator explicitly recognized it as a form of custodial punishment, albeit executed outside prison walls, similar in nature to community service or suspended sentences.

This measure may be requested by the convicted person or their counsel and is applicable when the imposed or remaining sentence does not exceed three years.

Furthermore, Ordinance No. 15-02, amending the Code of Criminal Procedure, authorizes the hearing of witnesses and experts via technological means and remote videoconferencing, as part of its Chapter VI on the Protection of Witnesses, Experts, and Victims.

Later, Ordinance No. 20-04 further strengthened this framework by devoting an entire section to the use of audio-visual communication means during judicial procedures. This section consists of three chapters:

- Chapter One: General Provisions;
- Chapter Two: Use of videoconferencing during judicial investigations;
- Chapter Three: Use of videoconferencing during trial proceedings.

Through these legislative efforts, Algeria has established a comprehensive legal foundation for conducting remote criminal proceedings consistent with due process guarantees.

B- Activation of Electronic Litigation within Civil Justice:

Over the past few years, the Algerian Ministry of Justice has made substantial progress in establishing a digital platform for electronic litigation in civil matters.

This platform enables the electronic exchange of pleadings and memoranda between lawyers, judges, and court clerks at the appellate level (*judicial councils*). By digitizing procedural communication, the system enhances efficiency, saves time and cost, and contributes to a smoother, more transparent judicial process that reinforces citizens' trust in justice.

The Algerian legislator has integrated this mechanism into the civil justice system through Law No. 15-04 on electronic signature and certification, which defines the methods of creating electronic signatures and establishes certification authorities.

This law allows the use of modern technological means in civil, commercial, and administrative transactions, particularly through the central information system of the Ministry of Justice, which verifies the authenticity of electronic documents.

Consequently, judicial and administrative documents issued by the Ministry and related institutions can now be authenticated through secure digital signatures, ensuring their legal validity and integrity[4].

Section II:
The Implications of Electronic Litigation for Ensuring a Fair Trial for the Defendant

The introduction of electronic litigation technologies in the justice sector has generated a series of consequences—some positive and others negative. While these technologies have modernized judicial processes, they have also raised concerns about their impact on the core guarantees of a fair trial.

Accordingly, this section is divided into two main parts:

- The positive implications of electronic litigation for fair trial guarantees.
- The negative implications of electronic litigation for fair trial guarantees.

A - Positive Implications of Electronic Litigation for Fair Trial Guarantees :

The adoption of **electronic litigation** has produced several **positive impacts** on the judicial system, making it more modern, efficient, and accessible. Among these positive outcomes are:

1.The promotion of equality before the courts;

2.The acceleration of judicial procedures;

3.The move toward a paperless judicial environment.

1- Ensuring Equality Before the Courts :

The principle of equality before the courts ensures that all individuals—citizens and residents alike—enjoy equal access to justice without discrimination based on origin, gender, color, belief, or personal opinion. Equality before the judiciary forms the very foundation of the human right to seek justice.

The implementation of electronic litigation has played a vital role in reinforcing this principle. By digitizing procedures, it has helped eliminate corruption and bureaucratic hurdles that plagued traditional judicial systems. It has introduced transparency, standardized procedures, and equal access to legal services via online portals.

This democratization of justice ensures that every litigant can file complaints or motions electronically without intermediaries, thereby promoting fairness and accessibility[5].

The Algerian Constitution explicitly enshrines the principle of equality before justice in Article 165, which states:

"The judiciary is based on the principles of legality and equality."[6]

In contrast, the Jordanian Constitution of 1952 establishes the broader principle of equality before the law in Article 6, which provides:

"Jordanians are equal before the law. There shall be no discrimination between them in rights and duties on grounds of race, language, or religion."[7]

Although Jordan's constitution does not explicitly mention equality before the judiciary, the general wording implies judicial equality as part of the broader rule of law.

Hence, both the Algerian and Jordanian legal systems recognize the centrality of equality as a precondition for a fair and impartial trial.

2- Accelerating Judicial Procedures :

Unjustified delay in judicial proceedings constitutes a violation of the litigant's right to a timely and effective remedy, as justice delayed is often justice denied[8].

Electronic litigation directly addresses this issue by simplifying and expediting procedures through the use of modern communication technologies, thereby minimizing bureaucratic delays and human error. It allows for the instant transmission of data and the real-time management of cases across judicial networks.

Systems such as digital signatures, electronic authentication, and remote hearings contribute to the efficiency and fluidity of judicial workflows[9].

In Jordanian criminal law, the Grand Criminal Court Act (Article 6)[10] allows sessions to be held anywhere in the Kingdom, not just in Amman. This flexibility illustrates the legislator's intention to avoid unnecessary delays and accelerate adjudication.

Furthermore, Article 10 requires the court to begin examining a case within ten days of its submission and to hold sessions at least every forty-eight hours, except when justified otherwise.

Article 12 obliges the court to render its decision within ten days of completing the trial, with a single possible extension of seven days.

These provisions demonstrate the Jordanian legislator's strong commitment to prompt adjudication—an essential element of a fair trial.

Conversely, other Jordanian criminal laws lack similar explicit provisions on prompt resolution, underscoring the need for broader legislative reform to guarantee timely proceedings in all criminal cases.

3- Transition Toward a Paperless Judicial System :

One of the defining features of electronic litigation is its reliance on digital tools instead of paper-based documentation. In electronic communication and procedural exchanges, the digital medium replaces physical documents entirely[11].

The electronic medium—typically a computer connected to the Internet or an intranet—serves as the intermediary for transmitting electronic intentions and communications instantaneously, regardless of geographical distance.

Electronic records thus replace paper records, and digital correspondence (emails, e-files, certified electronic messages) becomes a legally recognized form of evidence[12].

Both Algeria and Jordan have embraced this shift toward digital documentation, integrating online judicial platforms and secure authentication systems to ensure data integrity, confidentiality, and traceability within the judiciary.

This evolution aligns with international trends toward "zero-paper" judicial administration, reflecting the judiciary's adaptation to global technological progress.

B- Negative Implications of Electronic Litigation for Fair Trial Guarantees :

Despite its many advantages, electronic litigation often collides with certain fundamental safeguards of a fair trial. Legal scholars have raised several concerns, particularly regarding the principles of:

- Publicity of hearings,
- In-person attendance, and
- The right to defense.

1- The Impact on the Principle of Publicity :

The principle of publicity in criminal trials differs from the principle of confidentiality governing preliminary investigations. While investigative proceedings are conducted in secrecy, trials are public to ensure transparency and judicial accountability.

Critics argue that the use of videoconferencing and digital communication technologies, the core of electronic litigation, undermines this principle by excluding the physical presence of the public in courtrooms. This could potentially lead to judicial arbitrariness or lack of transparency.

However, others defend this practice—especially in times of public health crises—by citing compliance with World Health Organization health protocols, such as those implemented during the COVID-19 pandemic, to protect public safety[13].

In principle, criminal trials must remain public and oral, unlike civil or administrative proceedings, which are primarily written. The rationale behind publicity is to safeguard the defendant's rights and ensure the neutrality and accountability of judges, as public scrutiny acts as a check on judicial power[14].

The Jordanian Code of Criminal Procedure, in Article 171, recognizes publicity as the rule while allowing private hearings when public attendance threatens public order, morality, or family privacy, or when the defendant is a minor.

Furthermore, Article 210 of the UAE Federal Criminal Procedure Law and Article 183 of the Jordanian Code both require that final judgments be pronounced publicly, even if the trial was conducted privately[15].

Thus, publicity of trials remains an essential guarantee of fairness and transparency in any judicial process.

2- The Impact on the Principle of In-Person Attendance :

The physical presence of the defendant in court is crucial for enabling the judge to assess the accused's demeanor, emotions, and credibility—factors that heavily influence judicial reasoning.

Remote videoconferencing, by contrast, may hinder this interpersonal evaluation. Poor audio-visual quality or delayed transmission can distort perceptions of the defendant's behavior or tone, potentially biasing the judge's understanding.

The issue becomes more complex in Algeria following Ordinance No. 20-04, which expanded the use of videoconferencing to include criminal trials before the Assize Court. Article 441 bis 07 permits all trial courts, including criminal courts, to conduct hearings remotely.

However, this raises serious concerns about the credibility of verdicts, given that Assize Courts include four lay jurors, who often lack both legal and technical expertise. It is questionable how such jurors can form a reliable opinion about a defendant they have never physically encountered.

Moreover, the law grants judges broad discretion to decide whether to use remote hearings, opening the door to potential abuse[16]

Therefore, it is advisable to restrict videoconferencing to minor offenses and misdemeanors, avoiding its use in serious crimes where face-to-face confrontation is indispensable.

3- The Impact on the Right to Defense :

The right to defense is the cornerstone of a fair trial. It derives from the presumption of innocence, the right to be heard, and the right to equality between prosecution and defense. A just trial cannot exist where this right is violated.[17]

The Universal Declaration of Human Rights (1948), article 11 affirms:

"Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."[18]

Similarly, Article 14(3)(b)(d) of the International Covenant on Civil and Political Rights (1966) guarantees the accused adequate time and facilities for the preparation of defense and the right to communicate with counsel of their choice.[19]

The Algerian Constitution also safeguards this right under Article 175[20], and both Law No. 15-03 and Ordinance No. 20-04 reaffirm the right to legal assistance even in remote proceedings. The legislator explicitly requires that defendants be informed of their rights and permitted to consult with counsel, who may attend either alongside the defendant or before the investigating judge during videoconference hearings[21].

While these provisions demonstrate Algeria's commitment to protecting the right of defense, practical challenges persist—particularly in developing countries where technical infrastructure and reliable connectivity remain inadequate to ensure meaningful participation.

In contrast, Jordanian criminal law recognizes the defendant's rights to remain silent, question witnesses, and present defense evidence, but lacks a specific and comprehensive statutory framework governing the right to defense. Hence, legislative reform is necessary to codify this right explicitly and coherently within Jordan's procedural law.

Conclusion:

After examining the topic of electronic litigation and its implications for ensuring a fair trial, this study leads to several conclusions and recommendations that can enhance both the theoretical and practical understanding of this modern judicial mechanism.

Main Findings :

1. Electronic litigation represents a modern and efficient alternative to traditional judicial procedures, offering a new means to achieve justice in line with technological progress.

2.The Jordanian legislator has not explicitly provided for the guarantee of equality before the courts, despite its significance as a cornerstone of fair trial principles—unlike the Algerian legislator, who enshrined it constitutionally.

3. Both Algerian and Jordanian legislations uphold the principle of publicity in criminal proceedings, thereby reinforcing transparency and judicial impartiality.

4. The two legal systems share a similar legislative approach regarding the implementation of electronic litigation mechanisms, reflecting a shared vision for judicial modernization.

5. The new system of remote litigation is particularly beneficial for defendants charged with serious offenses, as it reduces the physical and security risks associated with their transportation between prisons and courts. It also minimizes costs and prevents delays caused by logistical challenges in bringing defendants to hearings.

Recommendations :

Based on the results of this study, several recommendations are proposed to strengthen the framework of electronic litigation while preserving the guarantees of a fair trial:

1. Training and Capacity Building: Organize intensive training programs for judges, lawyers, clerks, and administrative staff on modern technologies related to electronic litigation, to improve efficiency and ensure competent application.

2. Judicial Competency Assessment: Ensure that judges possess adequate digital literacy and technical proficiency before assuming judicial duties involving electronic procedures.

3. Scope Limitation: Reconsider the use of videoconferencing in criminal proceedings, limiting its application to minor offenses and misdemeanors, where risks to fairness are minimal.

4. Reliable Infrastructure: Provide stable internet connectivity and robust technical infrastructure to guarantee the effective and continuous operation of electronic litigation, especially in criminal trials.

5. Public Awareness and Legal Culture: Promote public understanding of electronic justice services through educational campaigns, media programs, and legal awareness initiatives that encourage citizens to use online judicial platforms.

6. Data Protection and Cybersecurity: Establish a comprehensive information security framework to protect judicial and personal data from cyberattacks, hacking, and malware that could compromise the integrity of digital evidence.

7. Encryption and Confidentiality: Develop strong encryption systems to preserve the confidentiality of judicial data and ensure the secure exchange of electronic documents among judicial institutions and litigants.

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