

Electronic Judicial Notification, a new concept in legal relations

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Abstract:

Judicial notification is considered to be one of the most important procedures undertaken by the court to achieve the principle of confrontation between opponents. This procedure has been characterized by many shortcomings and defects, especially those related to the issue of timing and durations of the litigation process, which hinders the completion of judicial operations with the appropriate speed necessary to resolve disputes in a short time and little expense.

For these reasons, some modern legislations have created new systems that keep pace with the scientific and technological development taking place, through the use of means of communication in the new so-called Electronic judicial notification, which has a lot of advantages in terms of efforts, time and expense.

Keywords: Judicial e-notification; litigant ; procedures ; legal relations

1. INTRODUCTION

One of the most significant features of this age, is the rapid development that the world is witnessing in the field of communications and information technology, the interaction between which has led to the emergence of the international information network known as the (Internet). The latter has allowed communication in a form exchanging digital information under a single framework of a unified protocol between electronic devices and networks that exist all over the world, casting a shadow on most fields of life, to an extent to which they have provided their users many and multiple options and applications that have had some significant aspects on social, economic, political and scientific activity, with

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no need for physical presence or mobility. Thus, it becomes easy for such procedures, and takes place with the least possible time and effort, as is the case in e-learning, e-commerce, and e-government.

Algeria is one of the countries that tends to embody the electronic litigation system in the “Justice Reform Program,” which was established under Law 15-03 related to the modernization of justice, according to which the Algerian legislator identified three mechanisms to digitize the justice sector.

The issue of judicial notification is considered to be one of the most important procedures undertaken by the court to achieve the principle of confrontation between opponents, meaning that it is not permissible to take any action against a specific person without informing him and giving him the opportunity to defend himself. This procedure has many shortcomings and defects, especially those related to the issue of the duration of the litigation process, which hinders the completion of this process with the speed necessary to resolve disputes in appropriate times and low expenses.

Because of these reasons and others, most modern legislations have sought to reform their procedural systems to address the practical problems of the issue of judicial notification, so they have created new systems that keep pace with the scientific and technological development taking place due to its significant impact on society.

Modern legislations had no choice but to seek help from the services provided by modern means of communication and exploit them in reforming their judicial systems, especially the procedural aspect, to avoid the defects of traditional judicial notification. In view of the advantages offered by modern means of communication in bringing the administration closer to the litigant, facilitating information obtaining, simplifying judicial procedures, reducing their cost, speeding up judicial processes, and many other advantages.

Based on the aforementioned proposal, we decided to raise the following problem: **What is meant by electronic judicial notification? What are its requirements? What are its provisions?**

To answer this problem, we tried to divide our research paper into two

axes as follows:

- 1- Introduction
- 2 - The concept of electronic judicial notification.
 - 2-1 Definition of electronic judicial notification.
 - 2-2 Requirements for electronic judicial notification.
- 3- Provisions for electronic judicial notification.
 - 3-1 Scope of electronic judicial notification.
 - 3-2 Evaluation of electronic judicial notification.
- 4- Results and discussion
- 5- Conclusion

2. The concept of electronic judicial notification:

Electronic notification is one of the modern terms that existed in line with the modern technological and digital developments witnessed by the contemporary world. It aims to reduce the efforts made by bailiffs when they conduct judicial notifications, and to save the time that sometimes prolongs when bailiffs conduct judicial notification due to the difficulties that may face traditional judicial notification.

Through electronic judicial notification, we can avoid many errors that occur after conducting judicial notification in traditional ways. Electronic judicial notification does not differ from traditional notification except in terms of the means by which it is carried out, so clarifying what is meant by electronic notification necessarily requires an introduction by defining the concept of judicial notification in general (first), and then searching for its requirements (second).

2.1 Definition of Electronic Judicial Notification

In order to research the definition of electronic judicial notification, it is necessary to know the meaning of traditional judicial notifications (first), and then address the definition of electronic judicial notification (second).

2.1.1 What is meant by traditional judicial notification

Notification is taken from the source verb “notify”, and its plural is (notifications). We can also say “notifying” which means “Reporting”, and a reporter is the responsible person about that, and reporting news, means informing people about them. (Ibn Mandour, 1993, pp. 419, 420)

It appears that the terminological meaning of “notifying” is not far from its

linguistic concept. So, judicial notification is an official legal procedure aimed at informing a person about a specific judicial act. On the one hand, it is a procedure because it is a legal act that forms part of the litigation and directly entails procedural effects recognized by the law, so it is a formal means that is not intended by itself, but rather prepares for an act on which its existence or otherwise is based. It must be done in accordance with the form prescribed by the law, otherwise it has no effect.

The Egyptian legislator -for instance- has used the term “announcement” instead of “notification”, as it is more general and comprehensive than the term notification, as its meaning includes informing, alerting, notifying, warning and excusing, and among the definitions that have taken this content is that the announcement (notification) is the main means drawn by the Code of Pleadings, in order to enable the other party to know about a certain action, by delivering a copy of the announced paper. While some jurists have argued that notification is the official means by which the opponent is informed of a specific fact, in order to enable him reviewing it, and there are those who believe that judicial notification is to notify the targeted person, and enable him to review it by handing him a copy. (Al-Dabas, 2021, p. 79)

Some also defined it as: "The official and legal means by which the opponent is informed of a particular fact, enabling him to review it and deliver a copy of it". (Shoshawi, 2010, p. 249)

It is also defined as "the delivery of judicial papers to natural and legal persons to be informed of the content of the notification paper or to appear on the notification paper's specified day and time in the relevant court to consider a specific matter over which the court has jurisdiction". (Muhammad, 2007, p. 161)

According to what has been mentioned above, it can be said that traditional judicial notification does not differ from electronic judicial notification in terms of content, but it differs from it in terms of the means used to conduct it.

2.1.2 What is meant by electronic judicial notification

We find that some jurisprudence has defined it as: "The adoption of new

and modern means of notification, not to replace traditional methods of notification, but to be an aid in the process of notification and to minimize legal disputes over the validity of notification. It is a means of communication with the litigants in the judicial affair, and it is used for informing them of the developments in the procedures and litigations." Electronic judicial service is the one carried out through an electronic medium, as it is the transfer of an electronic statement or report to the electronic address of the addressee for the purpose of informing him.

The word "electronic" is a word that means: "the technique of using electrical, electromagnetic, optical or any other form of similar technical means through written media or spoken mediums.

Written media such as: Text messages sent via cell phones, or via the Internet of all kinds, such as emails or messages written through a social networking site such as Twitter and Facebook, or messages of electronic applications that have been commonly used in recent times.

Spoken mediums such as phone calls or calls from various technological applications (such as Tango, Messenger, WhatsApp, IMO, and Viber ...etc). (Al-Badirat, 2022, 1153)

In addition to the above, electronic judicial notification can also be defined as: "A procedural act that is carried out through notifying the opponent in the case of any judicial action taken against him, using modern means of communication without the need to physically move and search for the location of the person announced to him, so that it dispenses with the traditional methods of modern announcements, as the electronic announcement does not differ from the traditional announcement in the subject and purpose, but differs in terms and tools of the means of announcement using modern methods of various kinds." (Fawaz Abdel Fattah Hamid, 2021, p. 11)

On the light of the last definition, we extract several elements that we refer to as follows:

- It is considered an official means because it is issued by a competent official in the state, and is considered as an authority over all people and may not be challenged except by forgery, and this is with regard to

traditional or electronic judicial notification, as the latter is issued by a competent official and within his powers, and bears the same qualities as the official document.

- Judicial notification is done through a judicial paper by which the opponent is informed of a specific fact by receiving it from the opponent, this procedure aims to inform all litigants of the fact specified in the received judicial notification paper.

- The opponent is notified by the court, the judicial notification paper must be communicated to the opponent through the bailiff, who is a competent employee, as it is an official paper that may only be communicated by a competent employee, and within his spatial jurisdiction, whether it is traditional or electronic notification.

Finally, we can say that traditional notification differs from electronic notification in terms of the means used to conduct it, as the electronic means used in the notification procedure is what gives electronic character to judicial notifications, so we can define electronic judicial notification as: "Informing the person to be notified of the judicial papers and the procedures taken against him by electronic means, in accordance with the principles specified by the laws and regulations in force".

2.2 Requirements for Electronic Judicial Notification

The use of electronic judicial notifications requires the availability of a set of electronic, technical and human requirements, which are considered as a prerequisite for the transformation of traditional judicial notifications digitally or electronically.

2.2.1 Electronic and technical requirements

The electronic requirements form a big part from the necessary and most important requirements, as they represent the essence of the difference between traditional and electronic judicial notifications, as the electronic notification procedure requires the availability of a set of electronic means such as e-mail, mobile phone or fax machine.

The extreme importance of electronic requirements in the electronic judicial notification process is evident in the fact that the latter cannot be envisioned without the presence of the electronic means used in judicial notification.

(Al-Badirat, 2022, pp. 1120, 1121, 1122)

As long as the process of electronic litigation does not cease to be one of the methods of e-judiciary, the process of electronic judicial notification requires, in addition to computers and electronic boards, the presence of internal or local systems connected to electronic courts, by linking different computers to each other and to the centralized devices of the court, while connecting them to Internet communication networks through the Internet service, which must be of high quality, otherwise it prevents the success of the objectives and work of electronic judicial bodies in general, and electronic judicial notification in particular. (Nabaa, 2020, pp. 322, 323)

What is worth noting here is that all electronic means and media used in the process of electronic judicial notification require a set of controls related to the need to provide a safe technical environment, and this is achieved by providing modern technical and electronic devices and means that allow this process to be carried out in a precise manner that does not allow hacking or manipulation on the one hand, and ensures its continuity and does not interrupt or stop it on the other hand. (Al-Badirat, 2022, p. 1180, p. 1183)

2.2.2 Human and legal requirements

Electronic judicial notification is not based on merely providing a technical and electronic environment, but also requires a set of human and legal requirements, due to the fact that proceeding with the process of electronic judicial notification depends not only on the mere use of electronic means, but also on the safety of their use by those in charge of this process, and for this reason, proceeding with electronic judicial notifications requires electronic competence of human resources, from the staff working in the electronic courts to the notifiers or bailiffs. To achieve this, it is highly demanded to train and develop electronic skills. (Al-Karawi, 2022, p. 338)

In addition, moving forward with the process of electronic judicial notification requires the necessity of providing the legislative and legal framework for this process, by issuing a set of legal texts in order to organize the work of electronic courts in general and the process of

electronic judicial notification in particular. The need for the legislator's intervention in this regard, is due to two reasons, the first being the specificity of electronic litigation procedures in general, and the second being the special nature of the means used in the process of electronic notification. (Nabaa, 2020, pp. 323, 324)

It can be said that electronic means are the essence and foundation of the electronic judicial notification process, which does not mean merely providing modern electronic means and technology, nor does it mean using them properly and safely by those working on the electronic judicial notification process.

Rather, what it means, is that the e-notification process is based on an optimal use of electronic means that assumes security and safety on the one hand, and the efficiency of the users on the other hand, within tight legislative and organizational frameworks where the idea of e-litigation in general and e-notification in particular is of a great importance.

3- Provisions of Electronic Judicial Notification

In order to know the provisions on which electronic judicial notification is based, it is required to search about the scope of application of the latter (first), in addition to evaluating it by indicating the advantages and disadvantages that characterize it (second).

3.1 Scope of Electronic Judicial Notification

The scope of application of electronic judicial notification in the field of the Code of Criminal Procedure is determined according to the applicability of the same penal texts, and the scope of application of electronic notification is related to the persons to whom the electronic judicial notification is addressed or received, in addition to the time and place of delivery or receipt of the latter. (Suleiman, 1995, p. 88)

3.1.1 Personal scope

The legal personality is divided into two types of legal persons, the first of which is the natural person, whose legal personality begins with his birth and ends with his natural or judicial death, and the second is the moral or legal person, whose personality begins after its recognition by the competent authority in the state, provided that both enjoy the same rights

except for what is necessary for the human nature of man (Al-Amroussi, 2014, p. 48, 147), and as such, the persons concerned with receiving electronic judicial notification are natural or legal persons.

As for the natural persons who are entitled to receive judicial notification, their notification is considered to be productive of its effects, they are those who have been identified -for example-according to the Jordanian Civil Procedure Law No. 24 of 1988 in its eighth article, which stipulates that "If the bailiff does not find the person to be served at his home or place of work, he shall deliver the paper to his agent or employee, or to those who live with him, including ascendants, descendants, spouses, brothers or sisters whose appearance indicates that they have reached the age of eighteen, provided that the interest of the person to be served is not in conflict with their interest." (See the text of Article 8 of the Jordanian Code of Civil Procedure No. 24 of 1988)

As for the legal person, the judicial notification is carried out by delivering the judicial papers to the legal representative of the legal person, because it is impossible to deliver the notification papers to the legal person itself, so this notification is delivered to a natural person like him, and thus the provisions for receiving the latter apply in accordance with the provisions related to the delivery of electronic judicial notifications to the natural person, who is considered in this case as a representative of the legal person.

3.1.2 Spatial and temporal scope

In accordance with the principle of territoriality of laws, the natural space for the application of penal law in a state is its national territory, but sometimes this application may exceed its natural scope, i.e. the application of penal law outside the territory of the state, when this is associated with a threat to the fundamental interests of the state. (Suleiman, 1995, p.p. 101, 109)

Accordingly, the spatial scope of electronic judicial notification is determined inside and outside the territory of the state, just like traditional judicial notification, according to the principles of the applicability of the penal text in terms of place, but the method of application between the two notifications remains different, in line with the different means used in

electronic judicial notification.

Within the framework of the spatial application of electronic judicial notification, the latter is restricted by the time limits for traditional judicial notification stipulated in Article 425 of the Code of Civil and Administrative Procedures, through the recognition of holidays within the time limits for notification, and in case the last day of the deadline is not a working day in whole or in part, the deadline is extended to the next working day.

On the other hand, no official notification may be made before eight o'clock in the morning, after eight o'clock in the evening, or on holidays, except in case of necessity and with the permission of the judge, in accordance with the provisions of Article 416 of the Code of Civil and Administrative Procedures. (See law No. 08-09, 2008, containing the Code of Civil and Administrative Procedure)

3.2 Evaluation electronic judicial notification in comparison to traditional one

The evaluation of electronic judicial notification includes both the advantages that characterize the latter and the disadvantages of traditional judicial notification in judicial work.

3.2.1 Advantages of the electronic judicial notification

The speed of communication is an important motive for adopting the electronic judicial notification procedure, especially with the tremendous development in the field of the Internet and the ease of communication between individuals and the reduction of efforts, which is reflected in the adjudication of litigation, so that they are adjudicated in a relatively short time, as electronic notification is one of the most important stages of the lawsuit, and the validity of the litigation depends on the validity of these notifications as well. (Hassam, 2019, p. 316)

This principle is considered to be one of the most important principles of a fair trial, and is intended to expedite judicial procedures by taking into account the legally established guarantees and familiar principles of judicial procedures, by facilitating and simplifying judicial procedures to reflect positively on both the victim and the accused. (Bahloul, 2021, p. 368)

The adoption of electronic judicial notification also results in reducing absences and postponements in the courts, in addition to shortening the duration of the dispute, reducing the accumulation of cases and overcrowding in the courts, and facilitating litigation procedures in general. The use of electronic judicial notification is reflected on the state treasury too, so that costs are reduced due to the reduction of human intervention. If we activate electronic notifications, this will reflect positively on the state treasury by reducing the number of bailiffs in the courts, and on the other hand, it reduces the storage of judicial notification papers in the courts and stores and archives them electronically on computers, and makes easy referencing to them when needed.

E-notification is also characterized by maintaining confidentiality so that only the concerned person or his legal representative can see the content of the notification, unlike traditional notifications, where third parties can simply view details of the notifications. This procedure also minimizes the common errors that may occur when using traditional notification, as avoiding errors is one of the most important advantages of electronic notification. (Fawaz Abdel Fattah Hamid, 2021, p. 12)

3.2.2 Disadvantages of traditional judicial notification

One of the most important disadvantages facing the traditional judicial notification procedure is the issue of delay in resolving litigations, and one of the reasons that contribute to this delay is the re-notification more than once until it has the desired legal effect, after going through several time-consuming procedures for re-notification, which may end with obtaining a court ruling that the judicial papers be notified by publication, and this procedure consumes the effort and time of the litigants and results repeated delay in the process of the trial.

Traditional judicial notification also contributes to the high costs and efforts of bailiffs, in contrast to the electronic judicial notification. (Hassam, 2019, p. 316)

Hence, the use of electronic means in the process of judicial notification carries the opposite consequences of the use of traditional means in the process of traditional judicial notification. The process of electronic judicial

notification entails many benefits, which would shorten time and save effort, through the speed of electronic judicial notification procedures and reduce the physical and mental efforts exerted by justice sector workers, not to mention gaining and guaranteeing rights by respecting the principle of reasonable time limits as one of the basic principles on which a fair trial is based. This is in contrast to traditional judicial notification, which is considered as a costly method in terms of expenses and efforts, in addition to wasting times and rights of litigants alike.

4- RESULTS AND DISCUSSION

In this study, we attempted to tackle the topic of judicial notification, because of its great importance on the judicial work and process, even on the project of reforming the justice in Algeria and other countries, that's why we studied the e-notification and its concepts and positives.

Thus, given the advantages offered by modern means of communication in bringing the administration closer to the litigant, facilitating obtaining information, simplifying judicial procedures, reducing their cost, and accelerating the pace of procedures. In accordance with this proposal, we concluded, through our research paper, thanks to many reasons and justifications that the adoption of this procedure (e-notification), is really necessary to reform the judiciary, and the judicial power, because of those numerous advantages of this procedure on the litigants, the judicial process and the project of e-government as a whole.

5- CONCLUSION / RECOMMENDATIONS

In the current study, we dealt with the topic of judicial notification, as the latter occupies an important place in various laws and procedures due to its connection to the rights of litigants and the rules of the course of justice, and its guarantee of the most important of these rights, namely the right of defense.

We also tried to touch the electronic judicial notification system, which is of great importance and is considered to be one of the most important measures taken by the court to achieve the principle of confrontation between the litigants, meaning that no action may be taken against a specific person without informing him or her, and giving him the

opportunity to defend himself.

This procedure in its traditional form has been characterized by many shortcomings and defects, especially the ones related to the duration of the litigation process, as it hinders the completion of these judicial operations with the necessary speed to resolve disputes in a less timely manner and at little expense.

For these and other reasons, most modern legislations have sought to reform their procedural system to address the practical issues of judicial notification, and have introduced new systems to keep pace with the scientific and technological development due to its significant impact on society, so few modern legislations had to utilize the services provided by modern means of communication and exploit them to reform their judicial system, especially the procedural aspect of it to avoid the shortcomings of traditional judicial notification.

Given the advantages offered by modern means of communication in bringing the administration closer to the litigant, facilitating access to information, simplifying the conduct of judicial procedures, and making them easy, reducing their cost, and speeding up their procedures, in addition to many other advantages.

Finally, we recommend the Algerian legislator and those in charge of the justice reform and digitization project to expedite the production of a draft law on electronic judicial notification, taking into account the associated laws, especially those related to judicial organization.

In this regard, we suggest the establishment of a national database affiliated with the national identification number of the Ministry of Interior, which includes a number of important information that facilitates communication with all individuals and citizens once they reach the age of legal mandate and civil majority, as this database can contain the personal e-mail of each individual, in addition to their telephone numbers, which can be used to contact them easily and help in realizing the real digital government.

5. Bibliography List :

1. Books :

- Abu al-Fadl, Jamal al-Din Ibn Manzoor, Lissane El-Arab, third edition, Part 8, Dar al-Sadr, Beirut, 1993.

- Anwar Al-Amroussi, The Natural and Legal Person in Civil Law, Dar Mahmoud for Publishing and Distribution, Cairo, 2014.
- Ibrahim Mohammed, The lawsuit between jurisprudence and law, Dar Al-Thultaqafa for Publishing, Beirut, 2007.
- Shoshawi Salah al-Din, Explaining the Basics of Civil Trials, Dar al-Thultaqafa for Publishing and Distribution, Amman, 2010.
- Abdallah Souleiman, Commentary on the Algerian Penal Code, General Section, Part I, Diwan of University Publications, Algiers, 1995.

2. Journal article :

- Nour Akef Al-Dabas, Provisions of Electronic Judicial Notification in the Jordanian Code of Civil Procedure, Al-Balqa Journal for Research and Studies, Volume 23, Issue 2, Amman Ahlia University, 2021.
- Nasif Jassim Muhammad Al-Karawi, Electronic Judicial Notification in Civil Litigation - A Comparative Study, Journal of Law Message, Department of Law, Karbala University, Vol. 14, No. 01, Iraq, Year 2022.
- Malika Bahloul, Reasonable time limits in criminal proceedings, Annals of the University of Algiers 1, Volume 35, Issue 03, Algeria, Year 2021.
- Mohammed bin Ahmed Al-Badirat, Judicial Notification through Electronic Means in the Saudi System, Journal of Jurisprudential and Legal Research, Issue 37, Faculty of Law and Political Science, King Saud University, Saudi Arabia, 2022.
- Obaid Hassam, The Idea of Electronic Judicial Notification, Basra Studies Journal, Issue 34, Iraq, 2019.

3. Seminar article:

- Nabaa Mohammed Abd, Luay Abdul Haq Ismail Ahmed, The importance of electronic litigation in the context of the impact of the Corona pandemic on the conduct of civil litigation, the first international virtual conference for graduate students in law schools, United States, October 14, 15, 2020.

4. Thesis and Dissertations:

- Mohammed Fawaz Abdel Fattah Hamid, Provisions of Electronic Judicial Notification, Memorandum submitted for a Master's Degree, Specialization in Private Law, Faculty of Law, Middle East University, Jordan, 2021.

5. Legal and Regulatory Texts

- Ordinance 20-04 dated 20/08/2020 amending and supplementing Ordinance 66-155 containing the Code of Criminal Procedure, Official Gazette No. 51 dated 31/08/2020, year 2020, Algeria.
 - Law No. 08-09, dated 08 Safar 1429, corresponding to February 25, 2008, containing the Code of Civil and Administrative Procedure
 - Jordanian Code of Civil Procedure No. 24 of 1988.
- 6- Footnotes.