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The Electronic litigation as a mechanism for achieving judicial efficiency

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Abstract :

Electronic litigation is a mechanism for modernizing the justice sector. It is a relatively new legal term whose application relies on modern technologies and technical means that gradually contribute to the transition from traditional, paper-based courts and outdated litigation methods to the use of modern technologies and electronic platforms in the various stages of public prosecution before criminal courts.

Keywords: Electronic litigation, technological means, judicial rulings.

INTRODUCTION:

The technological advancements and digital revolution the world is experiencing have impacted all aspects of life, including the judicial system. This has led to the emergence of a new judicial system based on principles, rules, legislation, and judicial rulings within the information age and digital technology. This new system arose as an inevitable consequence of the slowness of traditional justice and the burden of its financial costs, which weighed heavily on litigants. Hence, the urgent need to address these problems and to adopt electronic litigation and utilize modern technological means in the judicial field. E-litigation is a judicial system based on the use of electronic audio-visual communication technologies to conduct legal proceedings and even adjudicate disputes remotely, thus simplifying litigation procedures before criminal courts. The use of information technology has become an imperative today, dictated by considerations of speed, efficiency, and ensuring the continuity of the public justice system.

In Algeria, e-litigation was adopted within the framework of a comprehensive policy to reform the justice sector, aiming to modernize it, improve the performance of the judicial system, and enhance litigants' trust in it. However, this digital transformation, despite its importance, raises a number of legal and practical questions regarding the adequacy of the legislative framework governing it and its compatibility with the fundamental principles of a fair trial. Based on the above, we pose the following question: **To what extent has the Algerian legislator succeeded in establishing a comprehensive and effective legal framework for e-litigation that meets the requirements of speed and efficiency without compromising the guarantees of a fair trial and the rights of litigants?** We divided the study into two sections:

Section One: The Concept of Electronic Litigation

First Requirement: Defining Electronic Litigation

The second requirement: The role of e-litigation in improving judicial work

Third Requirement: The Legislative Basis for Electronic Litigation

Section Two: The Mechanism for Resorting to the Electronic Litigation System

The first requirement: Electronic litigation procedures.

The second requirement: Obstacles to resorting to the electronic litigation system in Algeria

SECTION ONE: THE CONCEPT OF ELECTRONIC LITIGATION.

Electronic litigation is a relatively new term, emerging only a few years before the widespread adoption of e-government. E-government refers to the transition from paper-based to electronic delivery of services and information via the internet. It represents an improvement in the performance of the judicial system, both in terms of administrative and judicial services. As a relatively new term, it requires a precise definition to dispel any ambiguity surrounding it. This article will attempt to clarify the concept of electronic litigation and its key characteristics and conditions.

First Requirement: Defining Electronic Litigation

The electronic litigation system is considered one of the achievements resulting from the information revolution and the emergence of the virtual world. Numerous definitions have been offered. One definition states: "The process of electronically transferring litigation documents to the court via email, where these documents are reviewed by the competent employee, who then issues a decision on their acceptance or rejection and sends a notification to the litigant informing them of the status of these documents." ¹

Jurisprudence also defines it as: "A new information-based judicial system whereby all litigation procedures are conducted through the electronic court using computers connected to the internet and via email, for the purpose of expediting the resolution of cases, facilitating procedures for litigants, and executing judgments electronically." ²

It is also defined as: "The authority of a specialized group of regular judges to review cases and conduct judicial procedures using modern electronic means, within an integrated information-based judicial system or systems that utilize the technology of the international network (the internet) and rely on state-of-the-art electronic systems and mechanisms to expedite the resolution of disputes and facilitate matters for litigants." ³

Therefore, it can be said that electronic litigation refers to the use of modern communication methods in litigation to benefit from information and communication technology in conducting litigation. This benefit may be partial, which is what is called electronic litigation or the electronic court. It means the transition from providing litigation services and transactions in their traditional form to an electronic form via the internet. ⁴

The second requirement: The role of e-litigation in improving judicial work

Electronic litigation, also known as remote litigation, differs from traditional litigation in several ways, including:

A/ The disappearance of paper documents and the emergence of electronic documents:

The adoption of electronic documents in place of paper documents has become one of the most prominent features of e-litigation. This is a fundamental characteristic of this modern form of litigation. This shift results in the elimination of paper-based court files, with all procedures and correspondence between litigants and judicial authorities being conducted electronically, without the need for paper documents.

These electronic documents are also characterized by their greater reliability and ease of detecting and preserving any alterations or distortions that may occur to them. This is due to the high level of security of the information systems adopted within the courts, which reduces the risk of file loss or damage. This transformation also contributes to increasing the efficiency of judicial work and reducing costs by minimizing the handling and storage of paper files within judicial bodies.⁵

B/ Electronic Exchange of Documents and Petitions:

E-litigation allows for the sending and receiving of judicial documents and petitions via modern communication networks, eliminating the need for litigants to travel outside their locations. This is achieved by sending digital files or data to dedicated judicial systems. This method represents a qualitative leap in managing litigation, given the flexibility and speed it provides for exchanging documents between parties and judicial bodies.⁶

C/ Using Electronic Media in Litigation Procedures:

Electronic litigation does not differ from traditional litigation in terms of subject matter or parties to the dispute. The fundamental difference lies in the reliance on a direct method of procedure, namely, the use of electronic media, primarily computers connected to the internet, to complete the various stages of the case. This leads to a reduction in the costs associated with judicial procedures, as it minimizes the need for the human and material resources required by traditional methods. Furthermore, it saves time and effort for judges, litigants, and court officials, thus contributing to greater transparency within the judicial system, reducing bureaucratic practices, and improving overall performance.⁷

D/Transitioning from Traditional to Electronic Evidence:

The rapid development of technological means has led to the emergence of modern methods of evidence that have acquired legal validity. Electronic writing and electronic signatures can now be recognized as legally admissible forms of evidence in judicial proceedings. In this context, an electronic document is a digital document that, after fulfilling the legal requirements, is considered valid and can be attributed to the parties involved in the case. This is achieved through the electronic signature, which is a set of digital data or symbols associated with the document, allowing the identification of the signatory and distinguishing him from others, thus ensuring the integrity of the document and giving it legal validity.⁸

Third Requirement: The Legislative Basis for Electronic Litigation

Referring to the legislative framework, we find a number of laws that address the concept of modernizing public services. The Algerian legislator adopted the electronic litigation system through the issuance of Law No. 15/03⁹ concerning the modernization of justice. This is a tentative but positive step compared to some other Arab countries that remain reliant on traditional methods of litigation.

This law contains 19 articles distributed across five chapters. The first chapter includes general provisions and the objective of the law. The second chapter stipulates the central information system of the Ministry of Justice, the certification of the validity of electronic documents, and the electronic authentication of documents and records. The third chapter regulates the process of sending documents and judicial procedures electronically. The fourth chapter includes the conditions and procedures for using remote video conferencing. The final chapter stipulates the penal provisions for those who violate this law.¹⁰

Furthermore, Order 05/02 amending and supplementing the Code of Criminal Procedure was modified, as the technology of electronic litigation was included in Chapter Six of the aforementioned law, which relates to the protection of witnesses, experts, and victims. Following the exceptional and health circumstances that the world experienced in what is known as the COVID-19 pandemic and its spread, and the resulting isolation, imposition of quarantine and home confinement, and the cessation of work in many sectors, the Algerian legislator amended the Code of Criminal Procedure by Order No. 20/04, which stipulated in Articles 441 to 441 bis 11 the possibility of questioning and hearing parties via remote video conferencing during the investigation and trial phases. Thus, the legislator, by virtue of the texts of the articles, added several provisions

that regulate the conduct of remote video trials in a more precise and detailed manner than it was under the Law on the Modernization of Justice.¹¹

It is worth noting that the Algerian judicial system witnessed its first remote trial on October 7, 2016, at the Koléa Court. The first international trial utilizing this technology took place on July 11, 2016, at the M'Sila Court, during which a witness present at the Nanterre Court in France was heard.

SECTION TWO: THE MECHANISM FOR RESORTING TO THE ELECTRONIC LITIGATION SYSTEM

The scientific and technological advancements in modern life, along with the proliferation of modern technologies, have contributed to improving the overall service system. This is achieved through the activation of the electronic litigation mechanism and the utilization of information technology, enabling parties to register their cases, submit evidence, present arguments, file appeals, and carry out all procedures through modern technological means. These means are characterized by the speed of case processing and the simplification of litigation procedures.

The first requirement: Electronic litigation procedures.

Electronic litigation is an information technology system that allows litigants to file their claims, submit evidence, and attend court sessions to reach a judgment and enforce it without personal attendance. However, this litigation is characterized by a set of procedures that distinguish it from ordinary litigation.

First/ Substantive Procedural Rules in Civil Matters:

Filing a lawsuit electronically is the first step in the electronic litigation system. It enables the litigant to file their statement of claim and pay court fees via a dedicated digital platform, without the need for physical attendance at the court. The lawsuit is registered in an electronic register created for this purpose through an official website, which allows the litigants or their lawyers to access it using specific identification credentials. The plaintiff prepares the statement of claim and attaches supporting documents in digital format. The defendant can also review it and submit their response memorandum in the same manner.¹²

For an electronic lawsuit to be accepted by the court, the same conditions required for an ordinary lawsuit must be met, namely standing, interest, and legal capacity, with no legal impediments preventing the case from being heard, as per Article 13 of the Code of Civil and Administrative Procedure. After preparing the statement of claim, the lawyer is required to authenticate it with a valid electronic signature, which is obtained according to the legally regulated procedures,

ensuring the document's integrity and attribution to its owner. The lawsuit submitted to the court is not accepted until the legally mandated fees are paid. With the information revolution, the electronic payment system emerged, allowing fees to be paid via electronic payment cards. ATM cards, credit cards, smart cards, and electronic networks are all methods of communication.¹³

Regarding the transmission of documents and procedures, Article 9 of Law 15/03 concerning the modernization of the justice system stipulates the methods of notification and transmission of documents and records electronically, in addition to the traditional methods stipulated in the Code of Civil, Administrative, and Criminal Procedure. This is a precedent in the field of judicial practice. Chapter Three of this law is dedicated to regulating the transmission of judicial documents and procedures electronically.¹⁴

Article 10 stipulates the conditions that must be met by the technical means used in these communications, such as the integrity of the transmitted documents, the security and confidentiality of the communication, reliable identification of the parties involved, and the necessity of data storage that allows for the definitive determination of the date of transmission and receipt by the recipient. It also affirms that a document transmitted electronically retains the same validity and effectiveness as the original document, provided it is prepared according to the same procedures and conditions.¹⁵

As part of improving public judicial services and easing the burden on citizens, litigants can now track their cases electronically through a dedicated information system. Upon filing a lawsuit, a tracking number is assigned, allowing them to follow the case's progress on the court's official website.¹⁶

In addition, litigants can access the verdict online, whether at the court or judicial council level. They can also access the electronic portals of the Supreme Court and the Council of State from the judicial councils. Furthermore, electronic exchange of criminal case files between prosecutors and investigating judges is facilitated, and an electronic correction service is provided for errors in civil status records, enabling citizens to submit their applications and supporting documents online.¹⁷

Second : the substantive and procedural rules in criminal law:

Current judicial procedures in criminal cases involve the defendant appearing via a screen in the courtroom, mirrored by another screen in the correctional facility. The judge calls the defendant's name and questions him using standard interrogation procedures, followed by the prosecution's requests and the defense's arguments. The court clerk records all statements made during the

session. The judge then deliberates on the case and delivers the verdict visually. The statements made during the session are retained electronically and attached to the paper file.¹⁸

The use of remote video conferencing during judicial proceedings is a recent development introduced by law, specifically Articles 14, 15, and 16, which are included in a dedicated chapter aimed at integrating modern technologies into judicial work. This technology is based on remote audio and video communication, particularly in cases where distance dictates and the interests of justice and its proper administration require it. This method allows the investigating judge to hear or question individuals without their physical presence. It also enables confrontations between multiple individuals.

Furthermore, courts can utilize this technology to hear witnesses, civil parties, and experts, which contributes to expediting and facilitating procedures. In misdemeanor cases, the court can resort to the same technology to receive statements from a detained defendant, provided the defendant and the prosecution agree. The questioning, hearing, or confrontation takes place using remote video conferencing technology at the court nearest to the residence of the person whose statement is being taken, in the presence of the territorially competent public prosecutor and the court clerk. The public prosecutor verifies the identity of the person being heard and prepares a report accordingly.

If the person is detained, the remote video conferencing takes place at the correctional facility, in accordance with the provisions of Article 14 of this law.¹⁹

It should also be noted that Article 14 of Law 15/03 concerning the modernization of the justice system linked videoconference to the explicit consent of the accused. However, the legislator reversed this with Ordinance 20/04, which amends and supplements the Code of Criminal Procedure, leaving the decision to the presiding judge.²⁰

For the use of remote videoconference to be valid, the Algerian legislator stipulated a number of conditions. These conditions include that resorting to remote videoconference technology is contingent upon the circumstances outlined in Article 441 bis, namely: ensuring the proper administration of justice, maintaining public security or health, during natural disasters, or for the purpose of respecting the principle of reasonable time limits. This means that the technology cannot be used as a substitute for ordinary trials; it is a procedure that is not resorted to in the future. To him unless the need arises.

The second requirement: Obstacles to resorting to the electronic litigation system in Algeria

Despite the recent developments in the Algerian judicial system and the efforts made by the Ministry of Justice to optimize its application, the optimal implementation of electronic litigation faces challenges that hinder its progress and render its application flawed. Some of these obstacles are legal, stemming from legislative shortcomings, while others are technical, due to material factors beyond the legislator's control.

First /legal obstacles:

1- Legislative difficulties: Despite the Algerian legislator and the Algerian Ministry of Justice's efforts to establish a legislative and regulatory framework for electronic litigation and attempt to implement it, these endeavors have not achieved the desired results due to deficiencies in the specific legal framework. This raises issues primarily concerning the possibility of verifying the litigants' status, the validity of electronic documents, and the adaptation of legal texts, particularly procedural ones, to the mechanisms of electronic litigation.²¹

The electronic litigation system is now dictated by technological advancements and the information revolution of the modern world. Some countries have made significant strides in adopting this system, while others are progressing slowly, and still others are apprehensive about this modern technology and continue to face obstacles and challenges. This is also true for Algeria, where the most significant obstacle is the lack of regulatory frameworks for implementing and enshrining this system. Fundamental amendments to procedural laws are necessary to adapt them to serve electronic litigation.²²

2- Infringement on the Principles and Guarantees of a Fair Trial: This problem lies in the extent to which the remote litigation system adheres to the guarantees of a fair trial and the principles of evidence. This system has faced numerous challenges regarding the potential for violating or compromising these guarantees. The use of modern electronic means could deprive litigants of the principles of publicity, oral proceedings, and confrontation—principles upon which a fair trial is based.²³

Furthermore, the disparity in access to and use of technology, coupled with the implementation of the electronic litigation system, may undermine the principle of equality among litigants in exercising their right to access the courts through electronic proceedings.²⁴

3- Lack of human expertise: Electronic litigation requires human expertise, specifically a team of technicians specializing in the electronic field who operate the technical equipment and use the necessary software. In addition, judges, court staff, and lawyers must undergo intensive training in computer science, communication systems, and website development. Their offices must also be equipped with the latest computer equipment, enabling them to electronically register, track, and review cases.

4- Electronic Evidence and Signatures: The system of evidence in litigation is closely linked to electronic signatures, as no legal claim can be accepted without supporting evidence. Given the importance of this aspect, the Algerian legislator worked to develop means of proof by adopting electronic signatures, which was embodied in the issuance of a specific law in 2015. This law equated electronic and traditional signatures in terms of legal force. However, this regulation is not without some shortcomings, most notably the lack of a precise definition of its scope of application, especially concerning future transactions. Furthermore, the expansion of the use of electronic signatures may indirectly affect the system of evidence in the courts.

On the other hand, the issue of the admissibility of electronic evidence arises, particularly regarding messages sent via electronic media and their

suitability as sufficient evidence in court. The problem lies not only in accepting these media as evidence but also in ensuring their credibility and ability to express the truth in court. This requires careful analysis before a judge can rely on them.²⁵

Second/Technical Obstacles:

1- Digital Illiteracy: Digital or information illiteracy is a distinguishing factor between developed and developing countries. Therefore, countries strive to eradicate it in order to build a knowledge-based society and economy. This is achieved by equipping their citizens with the basic skills that enable them to effectively use computer technologies in their daily lives. Consequently, the lack of resources and the prevalence of digital illiteracy can be considered another obstacle to the optimal implementation of e-litigation. These factors hinder integration into the information society and limit the optimal use of e-litigation mechanisms.²⁶

2- Weak Internet Infrastructure: Algeria suffers from significant fluctuations and frequent outages in internet services. This directly impacts and disrupts e-litigation, negatively affecting the judicial process. Cases may be postponed, and communication between lawyers and detainees within correctional facilities may be disrupted. Furthermore, the limited internet coverage in remote areas makes filing lawsuits electronically impossible.²⁷

3- Viruses and Cyber Fraud: Electronic documents are vulnerable to deliberate sabotage attempts, such as the release of computer viruses that spread or delete data, or disable devices, thus reducing their effectiveness and hindering the timely execution of legal procedures²⁸. Cyber fraud also poses a significant challenge, as individuals or unauthorized entities may manipulate the electronic system to obtain documents, funds, or services through illicit means. This type of crime is often difficult to prove because it is committed remotely using sophisticated technologies.²⁹

CONCLUSION:

Based on the above, it can be said that e-litigation is an administrative and informational solution whose widespread implementation primarily requires updating legislation and judicial procedures, establishing a judicial information bank, and developing a technological infrastructure. Furthermore, it necessitates retraining judicial personnel and lawyers to achieve judicial efficiency. All of this will be ineffective unless society itself first transforms into an electronic society. Therefore, it is essential to transition to the electronic environment in its entirety, including technological facilities, smart cards, and electronic payment gateways. Only when a suitable environment is ensured can e-litigation be implemented.

Results:

- The added value of the e-litigation system lies in integrating digital tools into the judicial system, contributing to more efficient litigation procedures and aiming to develop and improve the performance of the judiciary.

- The Ministry of Justice has recently been working to establish e-litigation by approving several arrangements that allow for electronic litigation in civil and criminal matters.

- Despite the advantages of the e-litigation system, there are concerns about its implementation. Some question its effectiveness and whether it will actually contribute to raising the efficiency of the judiciary, or whether this will come at the expense of the guarantees afforded to litigants.

Recommendations:

- The success of e-litigation in Algeria does not depend solely on technology but also requires legal reform, human resource development, a robust technological infrastructure, and public trust in the digital system.

- It is essential to benefit from the experiences of countries that have been pioneers in adopting this system at the judicial level.

- It is necessary to develop a secure infrastructure and train judicial personnel and litigants to handle digital case files.

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