



The Foundations of Criminal Speed through Electronic Litigation during the Trial Phase

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Abstract:

Scientific and technological development has led to the necessity of adapting the justice sector to keep pace with this progress, from the administrative digitization of the sector to the digitization of judicial procedures, within the framework of what is known as electronic litigation. Algeria adopted it as an innovative mechanism to accelerate judicial procedures away from the drawbacks of the traditional system. However, the practical application of the electronic litigation system encountered numerous issues, the most prominent being its impact on the fundamental principles of a fair trial. In this regard, we addressed the concept of electronic litigation, its characteristics, legal foundation, and its effects during the trial phase, as well as its effectiveness regarding the guarantees of a fair trial for both parties. This necessitates balancing these guarantees and the manner of utilizing this technology to accelerate litigation procedures at the criminal level.

Keywords: Electronic litigation, trial, litigation principles, speed of procedures, fair trial guarantees.

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Introduction:

One of the most notable developments of this era is the rapid advancement in the field of communications and information technology, the interaction between which led to the emergence of the global information network. This network enabled communication through the exchange of digital information under a unified protocol between electronic devices and networks all over the world. This has had an impact on most aspects of life, offering users numerous and diverse possibilities through applications that have deeply affected social, economic, political, and scientific activities—without the need for physical movement or presence, thus making interactions easier and less time-consuming and effort-intensive.

Despite many countries adopting the concept of e-government, and thus transferring most governmental, economic, media, and societal activities to the electronic environment, the judiciary has not achieved notable progress in most parts of the world—including Algeria—compared to what has been accomplished in the private sector and other governmental bodies. This has contributed to the delay of cases in courts, potentially affecting social and security life, as postponing verdicts in lawsuits may lead to problems that push the parties toward violence, including the spread of corruption and social scourges.

Hence, there emerged a pressing need to solve the issues related to case resolution, facilitate litigation procedures, and keep up with global developments by integrating electronic technology into litigation procedures within Algeria's judicial institutions.

Research Objectives:

The study aims to examine the developments in modern criminal policy and the new ideas it has introduced, including the adoption of the electronic litigation mechanism in Algeria. This will be achieved through studying the legislative foundation for applying this mechanism in Algeria and the extent to which



electronic litigation impacts the fundamental principles of a fair trial.

Problematic:

Does resorting to the electronic litigation system contribute to accelerating and managing litigation procedures, or does it undermine and limit the guarantees of a fair trial?

Methodology:

To answer the proposed problem, we followed the descriptive approach by describing the reality of electronic litigation application in Algeria and the analytical approach to analyze and interpret legal texts scientifically in order to reach solutions to the posed problem.

First Chapter: The Concept of Electronic Litigation

In fact, electronic litigation emerged as a term at the beginning of the third millennium and represents the latest human innovation in legal jurisprudence within the context of modern technological advancement. It has a positive impact on litigation in general, through time-saving modern and advanced procedures aimed at achieving justice between citizens in the shortest and fastest way possible. It also expands the scope of litigation to include regions outside the previously established legal jurisdiction to reach international territories. This enables the Ministry of Justice to overcome the problem of geographical distance between countries and cities and its high costs.¹

Due to the significant advantages and importance of this modern technology, most countries are currently striving to adopt it.

¹ The first experience of finding a settlement for disputes via the electronic space dates back to 1996 when the Institute of Judicial Law, the American Arbitration Association, the National Center for Information Technology Research, and the Center for Law and Information Rules managed and supervised the Virtual Judge Program. Its main objective was to provide quick solutions to disputes related to the internet through a neutral judge, an expert in arbitration and laws governing internet activities or electronic judicial law. This goal was achieved by having the internet user send their complaint to the body via email, and then the body would select a neutral judge to resolve the dispute. The judge's decision is devoid of legal value unless accepted by the parties, and this service was free of charge. See: Salah Al-Manzlawy, 2007, pp. 163-164. "The Law Applicable to Electronic Commerce Contracts," Dar Al-Jami'a Al-Jadida for Publishing, Alexandria,.

Given the novelty of the idea, various definitions have emerged, and we will attempt to present the most important ones to identify its proper concept (First). This technology contrasts with traditional litigation in its execution methods through the use of media tools, giving it a set of distinct characteristics, we will highlight (Second). It also varies in types, which we will clarify (Third). Additionally, this technology requires a set of conditions for its implementation and operation, which we will outline (Fourth).

First: Definition of Electronic Litigation

The concept of electronic litigation is derived from the idea of electronic administration, which refers to the transition from providing services and information to individuals in traditional paper form to electronic form via the internet. It represents a development in the performance of judicial institutions in terms of both administrative and judicial services.

Legal scholars have made several attempts to define the electronic litigation technique. One of the most prominent definitions describes it as:

"A mandate granted to a specialized group of regular judges to examine cases and carry out judicial procedures using innovative electronic means, within a comprehensive judicial information system that relies on internet network technology and electronic file management software to review cases, issue judgments, and implement them with the aim of achieving speedy case resolution and facilitating litigants' access to justice²."

Another definition from legal doctrine describes it as:

"Obtaining forms of judicial protection through the use of electronic tools that assist human personnel, via technical procedures that ensure the realization of the principles and guarantees of litigation, within a legislative framework for those procedures that aligns with the general rules and principles of

² Safwan Mohammad Shdeifat, 2015, p 353 "Investigation and Criminal Trials via Videoconference Technology," *Studies*, Journal of Sharia and Law Sciences, Volume 41, Issue 1, 2015, Dean of Scientific Research, Jordan University.



procedural law while considering the specific nature of electronic tools³."

It is also defined as:

"The process of electronically transferring litigation documents to the court via email, where these documents are reviewed by the designated employee, who makes a decision regarding acceptance or rejection and sends a notice to the litigants informing them of the decision taken concerning these documents⁴."

Dr. Asaad Fadel Mandeel defined it as: *"The authority of the specialized judicial court to electronically adjudicate the dispute presented before it through the international network (Internet), relying on electronic systems and ultra-modern technical mechanisms with the aim of expediting the resolution of disputes and facilitating matters for the litigants⁵ ()."*

It is an informational technical organization that enables litigants to register their lawsuits, present their evidence, and attend trial sessions in preparation for reaching a judgment and executing it through electronic communication means, which are part of an information system that enables judges to communicate with litigants without their physical presence and to proceed with litigation procedures through this system. This system also provides, through the electronic court, transparency and speed in obtaining information.

It is clear from these definitions that their authors elaborated in explaining the concept and procedures of electronic litigation. It would have been better if they had sufficed with a concise definition, considering that the matter is one of legal

³ Hazem Mohammad Al-Shar'a, 2015, p. 514, *Electronic Litigation and Electronic Courts*, Dar Al-Thaqafa, Jordan, 2010, p. 57; Ismat Abdel-Majid Bakr, *The Role of Scientific Technologies in the Development of Contracts*, Dar Al-Kutub Al-Ilmiyah, Beirut, Lebanon,.

⁴ As'ad Fadhel Mandil, *Remote Litigation, A Legal Study*, Faculty of Law, Al-Qadisiyah University, Iraq, 2014, p. 04

⁵ Khaled Mamdouh Ibrahim, 2008, p. 13, *Electronic Litigation: The Electronic Lawsuit and Its Procedures before the Courts*, Dar Al-Fikr Al-Jami'i, Alexandria,.

jurisprudence, and had shortened the phrases to make the definition more inclusive of the concept of electronic litigation and clearer in its meaning.

Accordingly, we can define electronic litigation as follows:

"The use of visual and audio electronic communication means in conducting the judicial lawsuit and even adjudicating judicial disputes remotely."

Second: Characteristics of electronic litigation

The electronic litigation system is characterized by a number of features that make it different from traditional litigation methods and in line with the development in the age of information technology. These features can be summarized as follows:

1- Transition from a paper-based system to an electronic system:

The most prominent feature of electronic litigation procedures is the non-use of paper documents in all procedures and correspondences between the parties of litigation, as it is all conducted electronically. This aligns with the purpose of creating these mediums; namely, to create a paperless transaction society⁶. Therefore, electronic documents will ultimately replace paper documents, and the electronic message will become the legal reference that either party to the dispute can rely on in case of dispute, and as a piece of electronic evidence⁷.

The use of electronic documents and files also enables the elimination of the massive amounts of paper files in courtrooms and the random storage of case files, which often leads to their loss or misplacement.

Thus, it becomes possible to reduce the physical space allocated for storing paper files in judicial entities and to use it for other court activities. Additionally, electronic documents can be

⁶ As'ad Fadhel Mandil, *Op. Cit.*, p. 04.

⁷ Khaled Mamdouh Ibrahim, *Op. Cit.* 2016, p. 36. Hadi Hussein Al-Kaabi and Naseef Jassim Mohammed Al-Karaawi, "The Concept of Remote Litigation and Its Requirements," *Al-Muhaqqiq Al-Halli Journal for Legal Sciences*, Issue 1, Volume 8, 2016, p. 284.



accessed and reviewed easily and quickly compared to paper files.

2- Speed in receiving and sending documents:

The Internet allows for sending documents and some messages electronically, meaning instant electronic delivery of documents, just like electronic research and reports, in addition to services such as legal consultations and requesting expertise in a specific field, which rely on download technology. The second corresponding technology is known as upload, which means remote uploading, i.e., sending a file or program to another party. Thus, we see that electronic transmission devices play a legal role in implementing electronic litigation procedures, aiding the judiciary in collecting, storing, preserving, as well as in announcements, notifications, and exchanging documents between the parties or their legal representatives⁸. This feature allows for optimal time investment.

3- Use of electronic media in carrying out litigation procedures:

The use of electronic media in implementing litigation procedures over the electronic communication network is one of the most important characteristics of electronic litigation. It does not differ in subject or parties from traditional litigation, but the difference lies in the execution method, which is conducted using electronic media: a computer connected to the Internet or a private external network (Extranet) that transmits expressions of electronic will simultaneously despite the geographical distance between the parties⁹, allowing the hearing of their statements,

⁸ Hadi Hussein Al-Kaabi and Naseef Jassim Mohammed Al-Karaawi, , 2016, p. 284. "The Concept of Remote Litigation and Its Requirements," *Al-Muhaqqiq Al-Halli Journal for Legal Sciences*, Issue 1, Volume 8

⁹ Khaled Mamdouh Ibrahim, *Op. Cit.*, p. 36.

exchange of memos between them or their representatives, hearing witnesses or interrogating parties.¹⁰

4- Speed in adjudicating cases and completing litigation procedures:

The process of sending and receiving documents and files in electronic litigation occurs without the need for the litigants to make repeated visits to the courthouse, thereby saving time, effort, and costs. This also contributes to reducing crowding problems in courts and raising the quality of service provided to litigants.¹¹

Additionally, in current traditional litigation, the judge might hold the first session just to hear the plaintiff's statements, then set another appointment—possibly one, two, or even three months later—for the second session. When the second session arrives, the judge may have forgotten the case entirely, spending half of it reviewing the first session's notes and asking the parties what happened. There might even be another session after three more months to hear the evidence, and so on in a never-ending series.

In electronic litigation, this will completely disappear, as the case will not be submitted to the judge until all data, evidence, and statements that the parties wish to present are completed. Then a summary approved by both parties is submitted to the judge for review. The case is thus fully mature upon submission to the judge, who might only need to ask a few simple questions before issuing a ruling immediately.¹²

5- Proof of litigation procedures electronically:

Information technology, in today's modern age, has swept across the globe and imposed itself in many daily life dealings, making

¹⁰ Leila Issmani, 2016, p. 2018 "The Electronic Litigation System: A Mechanism for the Success of Development Plans," *Al-Mufakkir Journal*, Issue 13, February 2016, Faculty of Law and Political Science, Biskra University,

¹¹ Said Ahmed Mahmoud, *The Role of Computers in the Judiciary*, Dar Al-Nahda Al-Arabiya, Egypt,.

¹² Leila Issmani, *Op. Cit.*, p. 218



the world a small village without geographical boundaries despite the distances and time zone differences, through the proliferation of modern communication means. This has led modern law to recognize electronic transactions and their associated legal effects.

Compared to traditional litigation, which relies on paper support to prove the physical existence of transactions—and where writing is not a full proof unless signed by hand—electronic litigation is proven via electronic documents and electronic signatures. The electronic document embodies the rights of both contracting parties and serves as the reference for what they agreed upon and their legal obligations. The electronic signature gives this document its legal force¹³.

In line with this electronic lifestyle, it has become necessary to recognize the validity of procedures carried out electronically, which is a distinguishing feature of electronic litigation. It is also essential to clarify the legal conditions of their validity or nullity.

6- Quality of service provided to litigants and creation of electronic courts:

Electronic litigation has achieved many advantages, such as reducing public crowding in courts, improving the quality of services offered to litigants, increasing work cycle efficiency, and linking case information across courts.¹⁴

It enables increased productivity of judges, as judges can review significantly more cases than they currently do, given that they are not required to be physically present at the court daily. They can review cases and discuss them with the parties from anywhere in the world.¹⁵

This also reduces wasted judicial time caused by the absence of one of the parties from court, as electronic litigation allows for

¹³Hossam Mohamed Nabil, 2017"Electronic Litigation and Swift Justice," *Language of the Era Journal*,

<http://aitmag.ahram.org.eg/News/86774.aspx>.

¹⁴ Khaled Mamdouh Ibrahim, *Op. Cit.*, p. 40.

¹⁵ Khaled Mamdouh Ibrahim, *Op. Cit.*, p. 41.

advancing some cases over others through direct communication with the parties.

It also enables easy and smooth monitoring of judicial inspection activities, as a judicial inspector can access the judge's platform, review the number of completed cases, the nature of the issued judgments, and even attend the sessions live via the Internet from his location without needing to travel or visit the judge's office.

Electronic litigation allows for involving non-judicial legal experts, such as law professors, by assigning some court sessions to them or consulting them in specific cases. This accelerates case resolution and eases the burden on judges.¹⁶

One of the features of electronic litigation is also reducing the violations that usually occur during litigation, whether these violations come from the litigants or the judges. The advantage of recording in this type of litigation will make the parties to the case maintain verbal and behavioral balance, adhering to the systems and instructions governing litigation processes, so that these potential violations cannot be used against them in any way.

Electronic litigation is also considered the subsequent phase for establishing electronic judicial facilities, as it is not possible to file a case electronically without the judicial body having a website on the internet or being connected to a special computer system.¹⁷

1. The International Legal Basis for Electronic Litigation in Algeria

¹⁶ This is perhaps one of the key features of this type of judiciary, as it contributes significantly to reducing avoidance of the judiciary by many qualified individuals. One of the main reasons for this is the distance from the designated location, the difficulty in commuting, and the long delays in transferring to the desired city. In this context, the ministry can offer some incentives to judges, encouraging them to resolve a larger number of cases in this type of judiciary, such as exempting those who manage to resolve a certain number of cases electronically per month from daily attendance, along with other similar incentives. Hossam Mohamed Nabil, *Op. Cit.*

¹⁷ Maria Iskandar Al-Badri, "Electronic Litigation and Courts," *Al-Hewar Al-Mutamaddin Journal*, 02/12/2008, www.m.ahewar.org/s.asp?aid.



We will present the most important international agreements ratified by Algeria, which include the idea of electronic litigation as a mechanism adopted by Algeria in investigations and hearing witnesses. The United Nations Convention against Transnational Organized Crime is perhaps the first and most important international law regulating this issue, where we find that it addressed the idea of "Videoconference" through Article 18, paragraph 18, as follows: "... Upon the request of the other state, a hearing may be held by video if it is not possible or advisable for the person concerned to appear personally in the requesting state. States parties may agree that a session be conducted by a judicial authority of the requesting state and monitored by a judicial authority of the receiving state."¹⁸

2. Domestic Legislation on Electronic Litigation in Algeria

Referring to Algeria's internal legislative system, we find a series of laws that addressed the idea of modernizing public facilities, especially the sovereign facilities of the state. Since the study is confined to electronic litigation, we will only review the recent updates in Algerian legislation in this area.¹⁹

Accordingly, we find:

- Law No. 15-03, concerning the modernization of justice,²⁰
- Ordinance No. 15-02, amending and supplementing the Code of Criminal Procedure.²¹

¹⁸ Leila Ismani, *Op. Cit*

¹⁹ Presidential Decree No. 02-55, concerning the ratification with reservations of the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on November 15, 2000, dated February 5, 2002, Official Gazette of the People's Democratic Republic of Algeria, published on February 10, 2002, No. 09, p. 61.

²⁰ We will only review the articles that address the concept of electronic litigation to demonstrate that Algeria has kept pace with technological advancements and global trends by adopting the idea of electronic litigation in its legislation, without delving into the related procedures.

A. Law No. 15-03 Concerning the Modernization of Justice:
The issuance of Law No. 15-03, concerning the modernization of justice, is considered a cautious but positive step for Algeria compared to other Arab countries that are still dependent on traditional means in litigation processes.

This law includes 16 articles, where the idea of electronic litigation was addressed as follows:
In the third paragraphs of Article 1:

- Establishing a centralized information system for the Ministry of Justice,
- Sending judicial documents and papers electronically,
- Using video-conferencing technology in judicial proceedings.

In order to modernize the justice sector, Article 2 provisions addressed the judicial and administrative organization, including the Court of Disputes²². Article 9 shows that Algeria has effectively adopted the idea of electronic litigation through the notification and sending of judicial documents electronically²³.

Article 14 further states: "If distance or the need for the efficient conduct of justice requires, parties may be interrogated and heard through video-conferencing."

Article 15 specifies the scope of this technology's use in its three paragraphs as follows:

²¹ Law No. 15-03 concerning the modernization of justice, dated November 1, 2015, Official Gazette of the People's Democratic Republic of Algeria, published on February 10, 2015, No. 06, p. 04.

²² Ordinance No. 15-02, amending and supplementing the Code of Criminal Procedure, Ordinance No. 66-155, dated June 8, 1966, dated July 23, 2015, Official Gazette of the People's Democratic Republic of Algeria, published on July 23, 2015, No. 40, p. 28.

²³ **Article 02 of Law No. 15-03 on the Modernization of Justice:** "A central information system shall be established for the automated processing of data related to the activities of the Ministry of Justice and its affiliated institutions, as well as the judicial bodies of the ordinary judicial system, the administrative judicial system, and the Court of Conflit."



"The investigating judge may use video-conferencing for interrogating or hearing a person, and for conducting confrontations between multiple persons. The adjudicating body may also use video-conferencing to hear witnesses, civil parties, and experts. The adjudicating body may also resort to the same mechanism to receive the statement of an imprisoned defendant if the defendant and the public prosecution agree."

Finally, Article 16 specifies where electronic litigation takes place, as follows:

"Interrogation, hearing, or confrontation using video-conferencing should take place at the nearest court from the residence of the person whose statements are to be heard, in the presence of the competent prosecutor and the clerk. The prosecutor verifies the identity of the person being heard and prepares a report accordingly. If the person being heard is imprisoned, the video-conferencing should occur from the penal institution where the person is detained."

Additionally, there are other provisions that address the use of the internet in litigation, methods of sending documents, and more.

B. Ordinance No. 15-02 Amending and Supplementing the Code of Criminal Procedure

The electronic litigation technique is included in the Algerian Code of Criminal Procedure, as amended and supplemented, in Chapter 6 "On the Protection of Witnesses, Experts, and Victims," in Book 1 under the title "On the Prosecution and Investigation Procedures."

Article 65 bis 27 states: "The adjudicating body may, either automatically or upon the request of the parties, hear a witness whose identity is concealed using technical means that ensure the secrecy of their identity, including hearing them via video-conferencing, and using methods that do not reveal the person's identity or voice..."

Thus, we note that the Algerian legislator has made a significant shift by adopting the idea of electronic litigation in its legal system.

Chapter Four: The Impact of the Electronic Judicial System During Trials

Law No. 15-03 on the Modernization of Justice and the Code of Criminal Procedure provide for electronic litigation procedures, which currently exist in judicial bodies, where the defendant appears on a screen in the courtroom, with another screen in the penal institution.

The judge calls the defendant and interrogates them with audio and video, following the same regular interrogation procedures. This is followed by the public prosecutor's requests and defense arguments, with the session clerk recording the statements made during the session. The judge deliberates on the case and pronounces the verdict while the defendant is visually present. The statements made during the session are retained on an electronic medium attached to the paper file.

Video-conferencing is the legal mechanism for electronic litigation in criminal matters, and Law No. 03-15 on the Modernization of Justice is the first law to establish this in Articles 14, 15, and 16, which were amended by Law No. 20-04 in the second additional book under the title "Use of Audio-Visual Means During Procedures" in Chapter 1 "General Provisions" in Articles 441 bis to 441 bis 11.

As per these articles, the legislator outlined the procedures for using audio-visual means during the investigation and trial stages. Referring to the above-mentioned provisions of the Modernization of Justice Law, we find the following:

Article 14 states: "If distance or the need for efficient justice requires, parties may be interrogated and heard via video-conferencing, while respecting the rights and rules set forth in the Code of Criminal Procedure and according to the provisions of this chapter. The method used must guarantee the confidentiality and integrity of the transmission. The statements are recorded on



a medium ensuring their integrity and attached to the case file. The statements are recorded verbatim and signed by the judge responsible for the file and the session clerk." Article 15 states: "The investigating judge may use video-conferencing to interrogate or hear a person and conduct confrontations between multiple persons. The adjudicating body may also use video-conferencing to hear witnesses, civil parties, and experts. The adjudicating body handling misdemeanor cases may also resort to the same mechanism to receive statements from an imprisoned defendant, if the defendant and the public prosecution agree."

The use of electronic litigation has led to several changes in the judicial system, resulting in both positive and negative impacts that have affected the fundamental principles of litigation to ensure a fair trial. Therefore, we will now address these impacts in detail:

First: Positive Impacts of Electronic Litigation

Electronic litigation has had a positive role, and the most important aspects are as follows:

1- Ensuring the Speed of Judicial Procedures

It is a principle of judicial work to resolve the presented case in the shortest time possible through simplifying judicial procedures whenever possible. The Algerian legislator, like other global legislations, has worked towards speeding up procedures, especially in recent times, through adopting some mechanisms that contribute to achieving this."

The electronic litigation mechanism is considered one of the most important mechanisms that aims to simplify procedures in a way that ensures no delays through benefiting from modern technology in managing the justice sector, away from traditional organizational methods, to allow information to be transferred and utilized in real time, using a set of informational systems, most of which rely on the global internet network. These systems include the electronic signature and certification system, remote

trial system, the Ministry of Justice's information system, and other systems aimed at improving the quality of judicial service. Resorting to remote communication technology in the judiciary ensures speeding up the judicial work, especially regarding hearing the accused, witness, or expert located far from the trial location. This leads to shortening time and geographical factors. The long duration of procedures may lead to the loss of evidence that may disappear or be forgotten, and the slow procedures may result in an extended period of temporary detention if the accused is in custody, thus worsening the material and psychological damages for the accused. Electronic litigation ensures reasonable deadlines that maintain the credibility, effectiveness, and smooth operation of justice without rushing the process.

Electronic litigation also guarantees the possibility of exchanging memorandums after submitting requests at the same time, without delaying lawsuits for more than one session, and the possibility of immediately sending the lawsuit from the first-instance courts to the appellate courts.

Thus, electronic litigation is a positive step and a qualitative leap that cannot be denied in activating the most important guarantees of a fair trial, namely the principle of reasonable trial deadlines, away from the disadvantages of the traditional system and its known slowness²⁴.

2. Ensuring the Principle of Equality Between Litigants

The use of the electronic litigation mechanism is likely to achieve the principle of equality between litigants, as it enables everyone who has an interest in it to benefit from electronic litigation services without exception, away from favoritism and social considerations, which have a negative impact on the smooth operation of justice. Therefore, activating the electronic litigation mechanism has greatly helped in liberating the judicial apparatus from bribery and judicial bureaucracy, which traditional justice

²⁴ **Article 09 of Law No. 15-03 on the Modernization of Justice:** "...Documents, judicial papers, and other documents may be delivered and sent electronically.



required, and has made the judiciary characterized by transparency and equality between litigants. This is done through unifying procedures, providing services, establishing a unified method of dealing, and making the website available to anyone wishing to file a complaint or to best uphold the principle of equality before the judge, especially since it has been considered one of the most important principles stipulated in the Algerian Constitution in Article 165, which states: "Judiciary is based on the principles of legitimacy and equality." Therefore, the principle of equality is considered one of the fundamental pillars on which the judiciary is based.

Despite the positive role played by electronic litigation technology in ensuring the achievement of the principle of equality between litigants, it has not escaped criticism. It has been accused of marginalizing the group unable to benefit from modern technology due to social or economic conditions. However, this criticism can be answered by pointing out the possibility of providing assistance to this group, especially since it represents a minority in light of the modernity and technology that various social classes have benefited from.²⁵

Second: Negative Effects of Electronic Litigation

Referring to Law No. 15-03 related to the modernization of justice and Decree No. 20-04 related to amending the Criminal Procedure Code, as previously mentioned, it was established that remote trials should be conducted in accordance with Articles 441 bis 1 to 441 bis 10 of the Criminal Procedure Code. Accordingly, it is possible to resort to remote trials by the court either on its own initiative or at the request of the public prosecution or one of the parties or their defense in questioning or hearing a person or in conducting confrontation. Thus, the electronic litigation system affects the guarantees provided during the trial as follows:

²⁵ Manal Rwaq, Yassine Jbeiri, previously cited reference, p. 160.

1. Violation of the Principle of Public Hearings and Oral Arguments:

The principle of public hearings refers to allowing the public, without discrimination, to access the trial procedures and be informed of the actions taken and the discussions and arguments during the trial. This principle is realized when the public is given the opportunity to attend hearings without discrimination.²⁶

Law No. 15-03 and Decree No. 20-04, as mentioned above, do not explicitly mention the principle of public hearings but emphasize the possibility of using remote video conferencing during the pronouncement of judgment, with the judgment being considered "in person" in this case. Article 285 of the Criminal Procedure Code stipulates the public nature of hearings as long as they do not pose a risk to public order and morals²⁷. Hence, the lack of explicit mention of public hearings in the context of remote litigation in these laws is due to the protection of public health and the prevention of the spread of the Coronavirus, aiming to maintain public order²⁸.

Therefore, the failure to explicitly state this important principle, which is a fundamental pillar of a fair trial, in two successive legal texts points to a legislative gap in the modernization of justice and the advancement of the judicial sector through technology, rather than indicating a violation of the general rules of fair trial. It is worth noting the need to balance between modernizing justice and maintaining the guarantees of a fair trial in a public session via digital platforms connected to the courtroom and other rooms where other parties are present, with prior announcements of the trial session and providing an electronic link that allows the public wishing to attend the remote

²⁶ Manal Rwaq, Yassine Jbeiri, 2021, p. 161. "Electronic Litigation and Ensuring a Fair Trial," Al-Basaer Journal for Legal and Economic Studies, Special Issue, December

²⁷ Karam Belbay, 2022 "Guarantees of a Fair Trial in International Standards," Volume 06, Issue 01, Abdelhamid Ben Badis University of Mostaganem (Algeria),

²⁸ Mohamed Hazit, 2022, pp. 358–359 *Principles of Criminal Procedure in Algerian Law*, in light of the latest amendments to the Code of Criminal Procedure and judicial jurisprudence, 3rd Edition, Belkess Publishing and Distribution,.



trial to access it, ensuring a balance between technological justice and the principle of public hearings.

As for the oral arguments and their requirements, which state that the evidence in the case should be subject to oral discussion during the trial, this means that the judgment session cannot rely on any evidence that was not discussed before it. This is based on the presumption of the accused's innocence, which requires respect for this right and the guarantees of a fair trial, ensuring a number of conditions that confirm and protect it.

In the framework of Decree No. 20-04 and the aforementioned provisions, this principle has not been discussed; rather, the focus was on identifying the bodies that can use this technique. Some argue that remote hearings via audio and video is a violation of fair trial guarantees and incomplete mechanisms, because the court is unable to conduct questioning and cross-examination of the accused from the location of the correctional facility due to the lack of high-quality microphones and speakers, which the European Court of Human Rights has required.²⁹

The natural solution to achieve speed in litigation, alongside ensuring oral arguments, is to provide electronic means and various modern technological techniques used in courts, ensuring that remote trials take place with the necessary safety and without broadcasting interruptions. This, however, deprives the accused of the opportunity to observe everything happening in the session.³⁰

Thus, based on this, if the accused is in an environment that does not allow him to accurately follow the proceedings of the session, speak freely, or present oral arguments, he cannot defend himself. This is because he is confined to surveillance cameras

²⁹ Article 285 of the Code of Criminal Procedure stipulates: "Court sessions are public unless their publicity poses a threat to public order or public morals. In such cases, the court shall issue its judgment publicly after holding the session in private. However, the president may prohibit minors from entering the courtroom. If the session is held in private, the judgment on the merits must be delivered in a public session."

³⁰ Boukresh Belkacem, Djoudi Ben Salem, previously cited reference, p. 180.

and fears that the calls may be intercepted, especially with the advancements in modern technology. Therefore, the court must ensure that this principle, enshrined in the Criminal Procedure Code, is implemented and respected for the remaining procedures to proceed quickly.³¹

2. Violation of the Principle of Face-to-Face Proceedings

Face-to-face proceedings are defined as taking all actions in the presence of the opposing parties in a way that enables them to be informed of them, either by conducting them in their presence, such as submitting requests and defenses and conducting investigations, or by informing them and enabling them to review and discuss them. The goal of this principle is to ensure the application of the right to defense for the parties by informing them of all proceedings and enabling them to respond to them.³²

Decree No. 20-04, when using remote video conferencing, especially in criminal trials, provides an procedural guarantee regarding the smooth operation of justice when implemented properly using available methods and tools that ensure the rights of the parties, especially the accused, as they are an essential part of the process. This guarantees the achievement of the most important conditions for a fair trial.³³

Remote trials for individuals abroad are more complex than for those within the country, especially since the technical issues often dominate, as audio-visual connections require careful attention to detail. Therefore, the legislator must intervene to regulate this matter, with discussions between various stakeholders such as judges, lawyers, and experts to reduce

³¹ Linda Mabrouk, 2022, p. 1651. *Guarantees of a Fair Trial Through the Use of Videoconferencing Technology*, *Journal of Law and Political Science*, Vol. 15, No. 1,

³² Okba Bouamara, Nacer Zerourou, 2024, p. 609.

Litigation in the Digital Environment Between Ensuring Speed in Procedures and Overcoming the Guarantees of a Fair Trial, *Critical Journal of Law and Political Science*, Faculty of Law and Political Science, University of Tizi Ouzou, Vol. 19, No. 02,.

³³ Abdelrahman Barbari, *Explanation of the Civil and Administrative Procedures Code*, 2nd Edition, Baghdad Publications, Algeria, 2009, p. 22.



obstacles while ensuring the normal implementation of remote hearings.

This is what distinguishes remote video trials in Algeria, where the practical reality of using this technique violates the principle of face-to-face proceedings, as the equipment used and the poor connection quality between the courtroom and the correctional facility are insufficient to implement the principle of face-to-face hearings.³⁴

This causes significant discontent among both the defense and judges. Fair trials rely on a set of essential legal procedures, including oral investigations, which the court enshrines during the session by listening to the accused and witnesses in person, something that does not occur in remote video hearings, as the accused's image and voice are unclear, and they are not fully aware of what is happening in the session, thus violating the principle of face-to-face proceedings.³⁵

However, practical practices show that using remote communication technology in criminal trials does not violate the principle of face-to-face proceedings, as the techniques used enable the parties to see each other clearly and accurately. Through this technology, the parties can actively participate remotely in these sessions, ensuring the principle of face-to-face proceedings between them without needing physical presence at the trial location. This has led some to refer to it as "remote attendance" in place of actual physical presence.³⁶

3. Violation of the Principle of Personal Presence and the Personal Conviction of the Criminal Judge

The principle of personal presence is a universal principle recognized in many advanced legislations that respect human

³⁴ Abdelhamid Amara, previously cited reference, p. 65.

³⁵ Amir Bousahia, Wafa Chenatlia, previously cited reference, p. 881.

³⁶ Jamal Qarnach, 2023, p. 328.

The Remote Visual Trial System in Criminal Matters: An Incomplete System, Journal of Research in Contracts and Business Law, Vol. 8, No. 2, Hassiba Ben Bouali University of Chlef (Algeria),.

rights, including Algeria, which has actively contributed to the protection of individuals' fundamental rights. The Algerian legislator has used terms indicating the establishment of the principle of personal presence, as evidenced by Article 212 of the Criminal Procedure Code. Personal presence helps strengthen the judge's personal conviction about the circumstances of the case by observing the accused's facial expressions and movements, something that video conferencing cannot fully convey. Remote presence might not clearly show the accused's expressions and movements, and the poor quality of the technology used may affect the audio and visual clarity, sometimes leading the judge to perceive that the accused is trying to avoid answering questions due to delayed audio, depriving the judge of important emotional cues.

And the opposite is true; the defendant may find the visual remote trial technology a good refuge to express himself freely, away from the dignity and respect of the court, which affects the deterrent value of the trial. Moreover, the physical presence of the prosecution and its presentation of its defenses without technical obstacles, while the defendant's presence using technical means often comes with issues affecting the quality of sound and image, which can affect the defendant's defense.

However, this matter has become more complicated with the emergence of Order 20-04, which expanded the use of remote visual communication technology to include criminal cases. Article 441 bis 7 stipulates that all judicial bodies can use remote visual communication technology, including the Criminal Court, which raises issues that affect the credibility of the judicial ruling. The Criminal Court panel consists of four lay jurors, who often lack legal training and possibly technical knowledge. How can these jurors form their conviction about a felony in which the defendant is not physically present before them? What makes the situation worse is the legislator granting the judge absolute discretion to decide whether or not to adopt this procedure, which may lead to judicial abuse in using this technology. The judge



may resort to using it in all felony cases. Therefore, it is necessary to reconsider the issue and limit the use of remote visual communication technology to simple crimes that do not pose significant criminal danger, such as misdemeanors and simple felonies.

However, it cannot be stated that this presence is entirely absent; rather, it is a relative presence that does not reach the level of personal attendance, especially given the weak technical capabilities possessed by the judicial system in third-world countries, including Algeria.

The system of remote visual trials also affects the personal conviction of the judge, which is a personal impression formed in the judge's mind as a result of a mental and scientific process that reflects what stirs in his mind and conscience under the influence of the facts presented to him, and what his conscience applies from perceptions and models of factual truth. In that process, the judge reaches strong submission and firm acceptance, reassuring his conscience and heart, leaving no room for doubt about the defendant's conviction or acquittal. The principle of oral and in-person discussion of evidence during the trial, with the presence of all parties to the case, is a condition for the judge's personal conviction and essential for its operation because it limits the judge's freedom in forming his conviction based on the evidence discussed in the court session only. This condition supports personal conviction and allows the judge to reach a personal conclusion rather than one imposed by others.³⁷

4- Impact on the Right to Defense:

The legislator has allowed the use of remote visual communication technology in criminal trials, but he overlooked the issue of the rights of the defense, particularly concerning the location of the defendant's lawyer. Order 20-04 grants the defense the freedom to choose whether to be present with the defendant at the place where he is being heard or in front of the

³⁷ Khalil Allah Felika, Yazid Bouhlit, previously cited reference, p. 898.

judicial body during the criminal trial. However, despite this guarantee, the defense is neither able to directly and effectively communicate with the defendant nor with the other parties to the criminal case, which does not fully ensure the right to adequate defense.

Therefore, it is necessary to safeguard the rights of the defense during litigation, especially during the trial stage, as this is the critical stage where the ruling on the defendant's guilt or innocence is made. The presumption of innocence must be respected in the context of modernizing the justice sector, as every person has the right to defend themselves using any means available, to influence the course of the case until the judgment is issued, whether remotely or in person.³⁸

Conclusion

After nearing the end of our modest study on electronic litigation, we must summarize the results we have reached and the suggestions it has led to, hoping that they will assist the Algerian legislator in developing its current legislation and contribute to enriching the Algerian legal library, given the scarcity of writings on this subject.

First: Results

- Electronic litigation requires a set of resources, including:
 - Legal resources, whether from international, regional, or domestic systems.
 - Technical resources, which are just as important, represented in the internet network and its components.
 - Educational resources, which include virtual human resources such as judges, lawyers, court clerks, as well as experts in the field of information technology, including engineers and technicians.
- The activation of the electronic litigation system by virtue of Order 15-03 is the optimal alternative to regular

³⁸ Jamal Qarnach, p. 328.



litigation procedures, especially in light of the circumstances faced by the world today, which have necessitated the implementation of social distancing policies and reducing human presence among litigants, thus helping to ensure the continuity of judicial work.

- Electronic litigation has advantages in ensuring the speed of procedures and the timely resolution of cases, but it is not without disadvantages, particularly when it comes to using remote visual communication technology, which affects the fundamental principles of a fair trial.
- The use of remote visual communication technology in the absence of ideal technical means for transmitting sound and image effectively is a sacrifice of the fundamental principles of a fair trial. The success of the electronic litigation mechanism depends on ensuring the availability of high-quality technological equipment and the necessary expertise in this field.

Second: Suggestions

- Developing the information system for the judicial authority's database, in accordance with the latest internationally adopted programming systems that are scalable.
- Reforming and unifying the legislative system, as there is a certain inadequacy in Algerian legislation. For example, Law 15-03 contains only sixteen articles, and the Algerian legislator has not made amendments to the Civil and Administrative Procedures Code, which is the foundation of litigation in Algeria, such as introducing an entire section on electronic litigation.
- Connecting the websites of the Ministry of Justice with judicial bodies across Algeria, including judicial, administrative, and dispute resolution courts.