
THE E-LITIGATION IN ALGERIA BETWEEN JUSTICE MODERNITY AND THE VIOLATION OF THE HUMAN RIGHTS

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ABSTRACT

The world has witnessed a new era of technological development in information and communication, which positively affected the judicial work. In this regard, many international legislations adopted the electronic litigation in their legal and judicial systems because it facilitates settling the issues, alleviates the burdens for the litigants, and improves the judicial work quality. The Algerian legislator adopted the e-litigation, in his quest for modernizing the justice sector, by Law 15/03 on modernizing the justice, and Law 20/04 that complements and supplements the penal procedures code to achieve the successful justice. Thus, this paper aims at studying the e-litigation system through tacking its advantages and obstacles.

Keywords: E-Litigation, legislators, judicial work.

INTRODUCTION

The world has witnessed successive technological developments that modernized the administrative work. Therefore, the states integrated the modern techniques that include the softwares and communication tools to increase the efficiency and quality of the provided services. As the other states, Algeria attempts to keep up in pace with the modern management that is based on the digital advance and quality facilities to satisfy the citizens. In addition, it launched a set of reforms in the public administrations to improve the public services. These efforts include the adoption of the electronic administration system in the sensitive sectors such as justice that witnessed the adoption of the e-litigation. In this context, to shed more light on this topic, we raise the following problematic, "to what extent did the e-litigation succeed in developing and modernizing the justice? To what extent does it affect the principles of the fair lawsuit?" In order to answer this problematic, we used the descriptive analytical method to cover the various concepts of the e-litigation. In so doing, we divided the study into two axes. The 1st revolves around the concept of e-litigation while the 2nd sheds light on its enforcement in Algeria.

Axis one: the concept of e-litigation:

It first appeared in the start of the 03rdmillennium as the last innovation in the jurisprudence amid the technological development. It had positive effects on the litigation in general since it saves time thanks to the sophisticated procedures that aim at the achievement of justice with the shortest methods. Besides, it widened the litigation cycle to cover international territories outside the recognized competency. Thus, it puts an end to the question of the geographic distance between the states and cities and the high costs. Thanks to the advantages of this modern technique, most states seek its adoption. This procedure has different definitions due to its novelty; therefore, we shall cover its concept and characteristics in the following lines.

First: definition of e-litigation:

It is based on the notion of the electronic administration that includes the shift from the traditional paper services to the electronic one via internet. Thus, it is a development of the judicial administrative performance and services. The jurisprudence gave many definitions to this concept. It defines it as an authority that includes a group of competent judges to consider the cases and start the judicial procedures using modern electronic tools in the light of complementary cyber judicial systems that use internet and electronic softwares to consider the cases and enforce the provisions to rapidly settle the cases and help the litigants.

In addition, it is defined as getting the judicial protection via the electronic tools that help the humans through techniques that guarantee the achievement of the litigation principles and guarantees in the light of a legislative protection of the measures in accordance with the general principles and laws of litigation, with consideration of the specific nature of the electronic tools . Furthermore, it is the process of electronic transfer of the litigation documents to the court via email to examine the documents by the competent officials, issue the decision of acceptance or refusal, and send notifications to the litigants . Moreover, it is the competent judicial authority that electronically considers the cases via internet relying on sophisticated techniques and electronic systems to settle the disputes rapidly and help the litigants .

These definitions show that the e-litigation is a cyber technical organization that allows the litigants to register their cases, provide the evidences, and attend the hearings to get a verdict through the electronic communication tools that allow the judges to contact the litigants with no need for their presence in the court, and to start the litigation procedures. Besides, it adds transparency to the prosecution and speed in getting the information. Based on what was said, we can sum up the e-litigation saying that it is using the audio-visual communication tools in the judicial cases and in their settlement.

Second: the characteristics of the e-litigation:

It has a set of characteristics that distinguish it from the traditional litigation and make it cope with the technological revolution.

1. The shift from the paper system into the electronic:

The e-litigation does not require the use of papers in all the procedures and correspondences between the two parties, as everything takes place electronically in a paper-free atmosphere . Therefore, the electronic media substitutes the paper and the electronic message turns into the legal support to be adopted in disputes as evidence . Besides, the use of the electronic documents helps get rid of the big amount of papers that fill the courts, and of the arbitrary storage of the files that may be sometimes lost. Thus, the storage spaces can be used for other activities. In addition, the electronic documents can be easily and rapidly accessed unlike the paper ones.

2. The fast reception and transfer of the documents:

Internet allows uploading and downloading files to send or receive documents, messages, researches, and reports. In addition, it allows for the legal counselling and asking for expertise. Thus, the electronic communication devices have a legal role in the implementation of the e-litigation procedures and help the judicial board in collecting, storing, saving, notifying, and exchanging documents between the litigants or their legal representatives to save time.

3. The use of the multimedia in the e-litigation procedures:

The e-litigation needs the use of the multimedia. In this line, it does not differ than the traditional one in the content or parties; rather it differs in the method, as it requires multimedia that include the computer, internet, and extranet that immediately allow the court to connect, hear, interrogate and exchange the memoranda between the different litigation parties despite the geographic distance.

4. The fast consideration of the cases and execution of the litigation procedures:

The process of transferring and receiving the documents in the e-litigation does not require the litigants to move many times to the court. Thus, e-litigation saves time, efforts, and costs; reduces the crowds in the court; and improves the quality of the services provided to the litigants .

5. Proving the e-litigation measures:

The modern information technology swept the whole world, imposed itself in many daily transactions, and made the world a small village despite the geographic borders and distances thanks to the communication tools. Therefore, the contemporary law recognized the electronic transactions and their legal effects. Compared to the traditional litigation that relies on paper to prove the physical existence of the transactions and requires hand signature to consider the proof, the e-litigation is evidenced through the electronic documents and signatures. The electronic document includes the rights of the two parties and is the reference that shows their agreements and legal commitments, and the electronic signature adds opposability to the document . To cope with the contemporary life, it is necessary to recognize the electronic procedures in the e-litigation. In this context, it is necessary to show the conditions of the validity of these procedures.

6. The quality of the service provided to the litigants and the creation of the e-courts:

The e-litigation has many advantages such as reducing the crowds in the courts, improving the quality of the services provided to the litigants, increasing the efficiency of the work cycle, and allowing the courts to access information about the cases. In this regard, it can increase the productive competency of the judge since it allows him to consider more cases because he will be able to settle the case from anywhere with no need to go to the court every day. In addition, the e-litigation saves time that is generally lost due to the absence of one of the litigants. In this regard, the judge can contact the litigants in their homes.

Moreover, it facilitates the judicial inspection, as the inspector can access the judge website and check the cases settled and the rulings. Besides, he can watch the prosecutions on internet thanks to the live videos without moving to the court. Furthermore, the e-litigation reduces the violations that generally take place during the litigation, either by the litigants or by the judges. The videotaping of the prosecution pushes the litigants to be more verbally and behaviorally correct and to abide by the rules; because any misbehavior shall be taped and used against them. The e-litigation is a phase that follows the phase of the establishment of an electronic justice facility because the case cannot be considered electronically without a website for the court and a connection to a special computer system.

Axis two: the application of e-litigation in Algeria:

As the other states, the Algerian justice adopted the notion of modernizing the public facilities and the judicial system through a set of new legal rules thanks to the developments of the communication technology. Thus, it launched the e-litigation via the videoconference for investigation and witnesses hearing. Based on this, we shall tackle the adoption of the e-litigation in Algeria, its legal basis, and its drawbacks.

First: The adoption of e-litigation in Algeria:

The first landmarks of the e-litigation appeared in 2007 after the then President inaugurated the judicial year 2007-2008 on 29 October 2007 saying that the reform of the justice is not an aim per se; rather, it is a periodical tool to upgrade the justice to the challenges imposed by the process of internal and external transformations. The modernization of the Algerian judicial facility went on with the discussion of the e-litigation in the parliament and its implicit acceptance by the MPs whose declarations were recorded on the 19th public hearing record of 24 November 2014.

Second: the legal basis of e-litigation in Algeria:

1. The international legal basis of e-litigation in Algeria:

We shall present the main international conventions ratified by Algeria to enshrine the e-litigation as a mechanism in the investigation and hearings. In this regard, the UN Conventions against the Transnational Organized Crime is the first and most important international law that regulates the issue. It tackled the videoconference in the 18th Article that states that: "at the request of the other, permit the hearing to take place by videoconference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party". Regarding the internal legislative system in Algeria, we find a set of laws that tackled the modernization of the public facilities, mainly the sovereign ones. In this context, because the study focuses on the e-litigation, we shall cover this point only. The Algerian legislator enacted a set of laws as follows:

a. Law 15-03 on the modernization of the justice :

It is a positive humble step compared to the other Arab states that still use the traditional litigation. The Law has 16 articles. The 1st includes general provisions and provides for setting a central cyber system for the Ministry of Justice, sending the judicial documents electronically, and using the videoconference in the judicial procedures. To modernize the justice, the Algerian Legislator enacted judicial and administrative provisions such as the disputes tribunal. Besides, he showed that Algeria has officially adopted the e-litigation through electronic notification and transfer of the judicial writs. In addition, Article 14 adds that if the distance is far, the litigants maybe heard via the videoconference. Moreover, Article 15 determined the extent of this technique and provided that the judge can use the videoconference in hearing or interrogating the parties, and in facing many parties. It adds that the judicial board can use the videoconference to hear the witnesses, the civil parties, and the experts. Besides, the judicial board may consider the misdemeanor using the same mechanism to get the declarations of a detained person if he and the public prosecutor accept. Furthermore, it determined the place of the e-litigation and provided for the use of the videoconference to interrogate, hear, or face the parties in the nearest court to the party whose declaration is need, with the presence of the general attorney who makes sure of the identity of the heard party and issues a report. If the party is detained, the videoconference takes place in the jail. There are also other provisions that tackled the transfer, the use of internet in the litigation,

etc.

b. Order 15-02 that complements and supplements the penal procedures code :

The e-litigation was mentioned in Section 06 “the safeguarding of the witnesses, experts, and victims” of Chapter 02 “the investigations” of the first book “the start of the public cases and the investigation” of the Algerian penal procedures code. In this line, Article 65 Bis. 27 provides that the judicial board can automatically, or under the request of one of the parties, hear the anonymous witness using technical tools that hide his identity. Thus, the Algerian Legislator made a giant leap with the adoption of the e-litigation in the judicial system.

Third: the drawbacks of e-litigation:

In addition to its advantages, the e-litigation has drawbacks that must be faced by the Algerian Legislator to guarantee the rights and freedoms of people, and a fair trial. The following lines discuss these drawbacks.

1. The violation of the guarantees of the fair trial:

The fair trial is one of the main human rights because it provides a legal protection of the other human rights. To have a fair trial, there must be stringent legal tools to protect the defendant and the victims and guarantee the good conduct of justice. The fair trial covers all the phases of the prosecution. However, it manifests very well in the investigation and trial. For instance, the investigation is very important because it allows the justice to unveil the crimes and their commissioners thanks to the evidences that pave the way for referring the case to the competent court. Due to the importance and sensitivity of this phase, the Algerian Legislator set guarantees that deter abuse and violations of the rights. In this context, the Legislator provided in the penal producers code for the presence of the defendant, the plaintiff, and their representatives to face each other and allow for the judge to know the events and the truth according to their declarations and emotions during the hearings; something that cannot take place electronically.

2. Violation of the inter-parties rights:

It is one of main principles of the justice in settling the issues because it guarantees the right of the litigants to discuss the arguments and requests during the trial. Thus, the judge cannot settle the case based on documents that had not been seen or discussed by the litigants in accordance with the principle of transparency: this cannot be achieved with the videoconference.

3. Violation of the right to public trial and equality:

The principle of the public trial is one of the guarantees that enshrine neutrality and control the justice because the distant trial may violate this principle even with the existence of the audience. In this line, the absence of the defendant may affect the reassurance that is drawn from the public control on the justice. In addition, the distant trial violates the principle of equality because the general prosecutor is physically and publicly present and presents his claims without any technical issues. On the other hand, the defendant is online and may face technical issues such as internet interruptions; which may affect the legally protected guarantees that allow him to defend himself.

4. Violation of the right to defense:

It is a constitutional right in all the phases of the penal case because it guarantees a fair trial. Law 15-03 on the modernization of the justice provides for the right to defense in the e-litigation and videoconferences. In addition, Order 20-04 that complements the penal procedures law grants the defense the right to choose between being with the defendant during the hearings or in front of the judge in the videoconference. Nevertheless, these guarantees are not enough and do not reduce the negative outcomes of using the videoconference because the defense may find difficulties communicating with the parties of the litigation; this affects the right to defense and the choice of the suitable method to face the accusations.

CONCLUSION:

In the end of this study that focused on the provisions of the e-litigation in Algeria, we found out that:

- The term “e-litigation” is modern and covers the services of the judicial branch. It is a cyber-technical organization with dual existence that allows the litigants to record their cases and submit their evidences online

using modern communication technology.

- E-litigation requires a set of legal, technical, and rehabilitative tools to succeed.
- Despite its many advantages that include the efficiency and fast access to justice, the e-litigation may threaten the privacy if the necessary protection measures are not taken.
- The e-litigation may not allow the fair use of, or access to, technology by everyone. Therefore, there may be unequal chances.

Based on these findings, we recommend:

- The justice must adopt security measures and laws that regulate the use of the digital techniques through clear policies that protect the personal data and secure the electronic systems.
- It is necessary to develop the information system of the judicial branch database according to the modern international programming systems that can be developed.
- It is necessary to reform and develop the legislative system.
- The websites of the Ministry of Justice, the judicial bodies, and the disputes tribunal must be linked.
- It is necessary to add a window to the websites of the judicial bodies that facilitates the e-litigation and provides visual and PDF explanations of how to extract the rulings, send the documents, etc.
- Working on providing training courses for judges and all staff members of the justice sector, including lawyers, court clerks, and technicians, is aimed at keeping pace with any developments in scientific technology. This aims to achieve better protection for electronic lawsuits from the risk of hacking, ensuring the confidentiality of information and judicial transactions.

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