

## E-LITIGATION IN ALGERIA

### التقاضي الإلكتروني في الجزائر

*Pr Hacina Cherroun* <sup>(1)</sup>

*Professor of Higher Education, Laboratory impact of jurisprudence on the dynamics of legislation,  
Faculty of Law and Political Sciences-University of Biskra (Algeria)*

*h.cherroun@univ-biskra.dz*

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#### **Abstract:**

*The subject of litigation over the Internet, witch called electronic litigation, as a mechanism adopted by most countries in the justice sector, because of its advantages in the conduct of public proceedings, such as reducing the burden on the parties to the public lawsuit, lawyers, judges, etc., In light of the important and distinct position occupied by the justice sector and its attempt to keep abreast of developments and technological changes by adopting the electronic litigation system, the problem of this study is reflected in the following main question: What are the effective means required by the system in order to achieve the goals of the judiciary? What is the reality of electronic litigation mechanism in Algeria? Through this intervention, we aim to reveal the mechanism of litigation through the Internet, to know its concept, its characteristics, and to indicate the means that must be met in order for the justice sector to achieve the established objectives, to present its application on the ground, Algeria as a model. In order to answer the problem and the secondary questions, we followed the descriptive and analytical approach, in order to control the various concepts related to the electronic litigation mechanism. We divided this study into three axes as follows: The first axis: the concept of electronic litigation. The second axis: the means of electronic litigation. Third: The application of electronic litigation mechanism in Algeria.*

**Keywords:** *E-litigation; internet; electronic conversation; judicial applications.*

#### **المخلص:**

موضوع التقاضي عبر شبكة الانترنت، أو ما يصطلح عليه بالتقاضي الإلكتروني، كآلية انتهجتها معظم الدول في قطاع العدالة، لما لها من إيجابيات على سير الدعوى العمومية، كتحفيف الأعباء على أطراف الدعوى العمومية، الإحامين، القضاة...إلخ، حيث تطرقنا لمفهوم هذه الآلية الحديثة، ووسائلها، ثم عرضنا تجربة الجزائر. وانطلاقاً من المكانة الهامة والتميز الذي يحتلها قطاع العدالة، ومحاولته مواكبة التطورات والتغيرات التكنولوجية بتبنيه لنظام التقاضي الإلكتروني، تتجلى إشكالية هذه الدراسة في السؤال الرئيسي التالي: ما هي الوسائل الناجعة التي يتطلبها النظام القضائي الإلكتروني من أجل تحقيق أهداف القضاء؟ وما هو واقع آلية التقاضي الإلكتروني في الجزائر؟ ونهدف من خلال هذه المداخلة إلى الكشف عن آلية التقاضي عبر شبكة الانترنت، ومعرفة مفهوماً، خصائصها، وبيان الوسائل الواجب توافرها حتى يتمكن قطاع العدالة من تحقيق الأهداف المسطرة، عرض تطبيقه على أرضية الواقع، الجزائر كنموذج. وليتسنى لنا الإجابة على الإشكالية والتساؤلات الفرعية، اتبعنا المنهج الوصفي والتحليلي، بغية ضبط مختلف المفاهيم المتعلقة بآلية التقاضي الإلكتروني. وتقسيم موضوع الدراسة إلى ثلاثة محاور كالاتي، المحور الأول: مفهوم التقاضي الإلكتروني المحور الثاني: وسائل التقاضي الإلكتروني المحور الثالث: تطبيق آلية التقاضي الإلكتروني في الجزائر

#### **الكلمات المفتاحية:**

التقاضي الإلكتروني، الانترنت، المحادثة الإلكترونية، تطبيقات قضائية.

<sup>1</sup> - Corresponding author: *Pr Hacina Cherroun*

*e-mail: hhacina@gmail.com*

**INTRODUCTION:**

One of the most prominent developments in this era is the rapid development in the field of communications and information technology, which led to the emergence of Internet network, which allowed the exchange of digital information within the framework of a unified protocol between Electronic devices and networks around the world, providing its clients with many possibilities through applications that had a great impact on most aspects of social, economic, political and scientific activity , The most important of these applications are e-enseignement, e-commerce, e-government.

Despite the adoption by many countries of the concept of e-government, and hence the transfer of most of the governmental, economic, media and its components to the electronic environment, the judicial facility has not achieved significant progress in most of the world, including Algeria, compared to the private sector and some other government agencies have contributed to the delay in court cases, which may affect social and security life. The delay in the adjudication of cases leads to problems that may lead to violence, including rampant corruption and social problems.

Hence, there is an urgent need to solve problems of adjudicating cases, facilitating litigation procedures, and keeping up with the developments in the world through the introduction of electronic technology into litigation procedures at the judicial system. in Algeria.

**I - THE CONCEPT OF ELECTRONIC LITIGATION:**

In fact, the term e-litigation<sup>1</sup> emerged at the beginning of the third millennium. As the most recent invention in jurisprudence under contemporary technological progress that improved the process of litigation in general, by investing time by following advanced and developed procedures in order to achieve justice among citizens in the shortest and fastest way. It also resulted in the expansion of the litigation process to include two areas beyond the jurisdiction previously established by law 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.<sup>2</sup>

In view of the importance and advantages of this new technology, most countries are currently seeking to adopt it. because of the modernity of the idea, we have found several definitions to which we will try to present the most important to try to determine the most accurate A. this methods of implementation using special supports , which makes it unique to a number of characteristics that we will try to highlight B It is also different in terms of categories, which we will explain C. It is also a technique that requires a number of conditions to be applied and we will try to demonstrate them D.

## **A - THE DEFINITION OF ELECTRONIC LITIGATION:**

The idea of e-litigation is derived from the idea of electronic management, which means moving from providing services and information to people in their traditional paper form, to electronic form via the Internet. It is a development of the performance of the judiciary, both in terms of administrative or judicial services.

In many attempts, the jurisprudence has tried to give a definition to e-litigation technology. Perhaps the most important of these definitions is: "The authority of a specialized group of regular judges to consider and initiate judicial proceedings by means of innovative electronic means, Internet connectivity and electronic file programs, adjudication and execution of judgments in order to reach a speedy decisions of cases and to facilitate litigations."<sup>3</sup>

It was defined by others, as : "Access to judicial protections through the use of electronic means of assistance to the human element through technical procedures to ensure the realization of the principles and guarantees of litigation under legislative protection of such procedures consistent with the general rules and principles of the Code of Procedure, Of electronic means"<sup>4</sup>

It is defined as: "The process of transferring electronic litigation documents to the Court by e-mail, where these documents are examined by the competent employee and the issuance of a decision on acceptance or rejection and to notify the litigants of what has been done on these documents"<sup>5</sup>

Dr Assaad Fadel Mundil define it as : "The jurisdiction of the specialized judicial court to electronically settle the dispute before it through the international network (Internet) and relying on electronic systems and technical mechanisms of ultra-modernity to speed decisions on litigations and facilitate the life ofthe opponents"<sup>6</sup>

It is an information technology organization that enables litigants to register their case, present their evidence, and attend trial sessions, in order to reach and implement the ruling through electronic means of communication, which is part of an information system that enables judges to contact litigants without their personal presence. This system allows through electronic court transparency, and quick access to information.

It is clear from these definitions that the authors elaborated on the concept of e-litigation and its procedures. It would have been better if they merely defined it as a matter of jurisprudence and shortened the terms to be the most comprehensive definition of e-litigation. Accordingly, we can define the electronic litigation as follows: "The use of electronic video and audio communication technology in initiating litigation and even adjudicating remote judicial disputes".

**B - THE CHARACTERISTICS OF ELECTRONIC LITIGATION:**

The electronic litigation system is characterized by a number of characteristics that make it different from litigation by conventional methods to keep pace with the development under the revolution of information technology, these features are summarized in the following:

**1-TRANSITION FROM THE PAPER SYSTEM TO THE ELECTRONIC SYSTEM:**

The most important feature of e-litigation is the non-use of paper documents in all procedures and correspondence between the parties to the litigation, which is done electronically, which is consistent with the purpose of establishing the media; in other words, creating a society of paperless transactions<sup>7</sup>. The paperwork is finally replaced, so that the electronic message becomes the legal basis that the parties to the dispute can adopt in the event of its creation and a manual of electronic evidence<sup>8</sup>.

The use of documents and electronic documents can eliminate the large quantities of paper files of the suits, which are almost filled with courtrooms, as well as disposal of the process of random storage of files and the consequent loss of information.

This can reduce the space allocated for storage of paper files in the judiciary, and use in other activities Court, and electronic documents it can , also ease and speed the access to information more than the paper files.

**2 - SPEED IN RECEIVING AND SENDING DOCUMENTS:**

The Internet allows for the transmission of documents and some electronic messages; in other words, the immediate delivery of documents electronically, as well as research and electronic reports, in addition to some services such as legal advice and the application of experience in a field, which depends on the download technology, Which is called "upload", which means remote download, that is to send a file or program to the other, so we believe that electronic transmitters have a legal role in the application of electronic litigation procedures, to help the judiciary in the collection, storage and preservation, Advertising ads Notifications, and in the exchange of documents between the litigants or their legal representatives (<sup>9</sup>). This feature allows investment in time.

**3 - THE USE OF ELECTRONIC MEDIA IN THE IMPLEMENTATION OF LITIGATION PROCEDURES:**

The use of electronic media in the implementation of litigation procedures over the electronic communications network is one of the most important characteristics of e-litigation, since the latter is not different in terms of subject matter or parties from traditional litigation, but the difference lies in the way it is implemented. In a computer connected to the Internet, or an external network that transmits the decisions of electronic administration at the same moment despite

the spatial difference of the parties to the conflict<sup>10</sup>, hearing their statements, exchanging notes between them or between their representatives, listening to witness statements Or interrogation Opponents.<sup>11</sup>

#### **4 - SPEEDING UP CASES AND COMPLETING LITIGATION PROCEDURES:**

The process of sending and receiving documents in electronic litigation without the need to move the parties to the lawsuit several times to the headquarters of the court, thus contribute to shorten the time and provide effort and reduce expenses, and this leads to reduce and absorb the problems of public congestion in the courts and the high quality of service level to the parties to the case<sup>12</sup>. In addition, we find that the traditional judiciary holds the first session, and may devote to hearing the prosecutor, and then give the two dates another date, perhaps a month or two months, and perhaps three months, for the second session, if the date of the second meeting, the judge has forgotten the case completely, The second half of the second session is spent reading the judge to set the first session, asking the two adversaries about what was going on, and perhaps holding another session to hear the evidence after three months, and so on in a series that does not expire. In e-judiciary, that will disappear completely. Shall not be submitted to the judge until all the data have been satisfied Data and statements that the parties wish to making them, then lifted the summary after the approval of both parties to the judge for consideration, the issue is here to be fully mature case filed by the judge, and the judge then needs some questions and then an easy judgment issued directly.<sup>13</sup>

#### **5 - PROOF OF LITIGATION PROCEDURES ELECTRONICALLY:**

The information technology in the modern era swept all countries of the world and imposed itself in many transactions of daily life, and made the world a small village without geographical boundaries between the continents despite the distance and the difference in timing through the multiplicity of modern means of communication, making contemporary law recognizes electronic transactions With legal implications.

In comparison with traditional litigation, which relies on paper support in proving the physical existence of transactions in it, and the writing is not a complete proof, unless signed by manual signature, electronic litigation is evidenced by electronic document and electronic signature. The electronic document enshrines the rights of the parties to the contract, It is the reference to find out what the parties have agreed upon, determine their legal obligations, and the electronic signature is the one that authorizes this document.<sup>14</sup>

In line with this electronic pattern in contemporary life, it is necessary to recognize the validity of electronic proceedings, which are characteristic of e-litigation as well; it is necessary to clarify the conditions of their validity and their invalidity by law.

**6 - QUALITY OF SERVICE PROVIDED TO LITIGANTS AND THE CREATION OF ELECTRONIC COURTS:**

E-litigation has many advantages, including reducing the problems of public congestion in the courts, raising the quality of service provided to the public of litigants, increasing the effectiveness of the work cycle, and linking court information between courts.<sup>15</sup>

Electronic litigation can increase the judge's productive efficiency, as the judge can consider the multiple cases he is currently considering. In view of the fact that the judge does not need the day-to-day attendance of the litigation venue, and that he can consider the case and discuss the litigants from anywhere in the world.<sup>16</sup>

This is in addition to reducing the waste of time of the judge, resulting from the failure of one of the adversaries to attend the headquarters of litigation, as it is possible in e-judiciary to submit some cases to some through contact with the parties to the case.

The judicial inspector can access the site dedicated to the judge, and then consider the number of cases completed, the nature of the judgments issued, and even be able to attend the direct hearings immediately after the transfer directly through the Internet, and is in place without the need to bother to travel , Or move to the seat of the judge.

Electronic litigation can be used by judges outside the judiciary, such as professors of law schools and the like, by assigning some litigation sessions to them and consulting them on some cases. This expedites the completion of many cases and eases the burden on judges.<sup>17</sup>

The advantages of registering in this type of litigation will also make the parties to the case in a state of verbal and behavioral balance, compliance with the regulations and instructions governing litigation, So as not to use those potential breaches against them in any way.

Electronic litigation is also the next step to establishing an e-judiciary facility, where the lawsuit can not be filed electronically without the judiciary having a website or being connected to a special electronic system.<sup>18</sup>

**C - TYPES OF ELECTRONIC LITIGATION:**

Four types of remote video chat systems can be distinguished, mainly:<sup>19</sup>

**1. ELECTRONIC LITIGATION THROUGH THE SYSTEM OF COMMUNICATION FROM ONE POINT TO ANOTHER:**

Under this system, direct tele-videoconferencing is made between the courtroom and another location where the accused or witness is present. This

system is the simplest and least expensive of audio-visual communication systems.

## **2. ELECTRONIC LITIGATION THROUGH THE SWITCH SYSTEM OR ACTIVE SPEAKER:**

Where the court is in a state and witnesses in a second state, and the accused in a third country. This system requires that these places be technically prepared so that these parties appear to be in one place. In all these places, there is only one picture in the form of the person speaking, whether the judge, the accused or the witness.

If more than one person is speaking at the same time, the audiovisual communication is automated with where the person with the highest voice is.

## **3. CONTINUOUS ATTENDANCE SYSTEM:**

Under this type, communication takes place between five different and geographically distant places, in the sense of the trial chamber, and four other places where the remaining parties are present: "victim-accused", witnesses, and others. Everywhere there is a screen to broadcast the picture to these people, as well as accurate devices by which the voices of the participants speak this session.

## **4. ADVANCED CONTINUOUS ATTENDANCE SYSTEM:**

The latter type, remote audio-visual communication, between the main hall where the investigation procedure is conducted and a large number of other places away from it. The system is one of the most modern systems of remote video chat technology, where places where this technology is required, with picture displays and audio devices through which the participants speak. The picture display in each of these places is divided into four sections. The first section is installed to display a general panorama of the courtroom and two other sections in two places connected to this hall, the fourth section relate to the dimensions of the display, automatically transforms into an automatic image of the person involved, and speaks louder than other participants in the investigation and trial hearing.

## **D - CONDITIONS OF WORK IN ELECTRONIC LITIGATION TECHNOLOGY:**

The use of the electronic litigation mechanism imposes on any State the obligation to comply with a set of conditions, particularly with respect to the question of judicial assistance between States.<sup>20</sup>

It should be noted that international law has established three basic conditions, which we review below:

1-The use of electronic litigation technology is not inconsistent with the law of the country to be implemented:

The second paragraph of the article 90 of the Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters requires

that the use of this technology does not conflict with the basic principles of the law of the implementing State and therefore rejects such use if it is deemed to lead to the loss of the basic principles of its law (Internal) procedure<sup>21</sup>, since jurisdiction does not belong to that State.

2-The Availability of the means and resources to assist the State concerned with the implementation of the electronic litigation mechanism:

In addition to the requirement that visual conversation or electronic litigation should not conflict with the basic legal principles of the state, the second condition is that the availability of means is mandatory. Which helps its implementation by the state.

The second paragraph of Article 90 of the second Additional Protocol to the European Convention on Judicial Assistance mentioned above explicitly recognized the need for technical means to enable the implementing State to do so and authorized the possibility of refusal to use this technique if it did not possess such In accordance with the financial aspect of that State<sup>22</sup>, may also be submitted to it by the requesting State through electronic means, to provide the necessary equipment or expertise for the use of the technology, whether on loan or donation.<sup>23</sup>

3-Restrict the use of electronic litigation mechanism to hear witnesses and experts from different regions:

The common concept of remote litigation is that the entire litigation process is based on modern technology using the Internet, but, in fact, only by hearing witnesses and expert testimony, where the judicial authorities of a Contracting State may request the hearing of a person located on the territory of a State Other Contracting Party - as a witness or expert - through this technique, when it is proved impossible or inappropriate for the actual appearance of such person, in accordance with the provisions of article 90, paragraph 1, of the same Protocol.<sup>24</sup>

It is noted through the paragraph of this article that the authors of the Protocol, by technically limiting the hearing of witnesses and experts, so as not to raise legal problems at the international and jurisdictional levels.<sup>25</sup>

## **II - ELECTRONIC LITIGATION METHODS:**

Undoubtedly, the idea of electronic litigation, adopted by most countries of the world, has not come arbitrarily, but through legal means, whether international or regional (A) technical means to keep abreast of developments in the field of electronic communication and informatics and enable them to accelerate the implementation of procedures Litigation electronically. (B) as this technique also requires rehabilitation means (C).

## **A - LEGAL MEANS IN E-LITIGATION:**

One of the most important means that contribute to the process of electronic litigation is the legislation, which means the existence of a set of written binding legal rules issued by a competent authority in the State, which is the legislative authority, to be appropriate to the state of scientific technological progress through the use of modern means of communication to apply Litigation procedures electronically and through the Internet.

This is done in two ways. The first is the exclusion of traditional rules and the promulgation of a new law that regulates these rules. The second is to adapt and develop the existing rules of traditional jurisdiction and to choose the appropriate ones for the application of electronic litigation procedures. , And to the end of the verdict, so it is necessary to review the laws in force for all countries of the world, to interact with this change as a result of technological development in communities and in line with it to absorb the new scientific technology that entered in all areas of life, His legislative system for this, to be the fulcrum of legal and legitimate means for the application of the procedures of this new mechanism, using modern scientific and technical means, and then keep up with the changes and investment to achieve justice and to catch up with the developed world.<sup>26</sup>

Perhaps the most important of these means are:

### **1. MODEL LAW ON ELECTRONIC COMMERCE:**

The United Nations General Assembly, by its resolution 51/162 at its 85th plenary meeting on 16 December 1996, adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law and stated in the preamble to the Model Law: "Believing that the adoption of the Commission Of the Model Law on Electronic Commerce will assist in an important manner all States in strengthening their legislation governing the use of alternatives to paper forms of communication and storage of information and in the drafting of such legislation if they do not exist "and" Recommends that all States take favorable account of the Model Law when enacting or revising their laws, And so on Consideration was given to the need to standardize the laws applicable to alternatives to paper forms of communication and information storage<sup>27</sup>.

The provisions of Article 30, which are intended to define terms, are defined as: for the purposes of this Act: (data message) means information produced, sent, received or stored by electronic, visual or similar means, including but not limited to data exchange Electronic, e-mail, telegraph, telex or telegram. Article 60 of the Act provides for the following: When the law requires that the information be in writing, the data message satisfies that condition, if the data contained in it is accessible in a way that allows its use for subsequent reference. Provided that it is a form of obligation or that the law merely provides for the consequences if the information is not written and the first paragraph of

article 90 states: "In any legal proceeding, no provision of the rules of evidence shall be applied in order to prevent acceptance The data message as proof.

## **2. MODEL LAW ON ELECTRONIC SIGNATURES:**

In its resolution No. 56/80 of 12 December 2001, the United Nations General Assembly adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures, which states in its preamble that the United Nations General Assembly "recommends that all States give positive consideration Of the Model Law on Electronic Signatures, together with the Model Law on Electronic Commerce adopted in 1996 and updated in 1998, when enacting or revising its laws, in view of the need to standardize the laws applicable to alternatives to paper forms for communication, storage and documentation of information " Article 2 (c) of the data message means "information created, sent, received or stored by electronic or optical means or by similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or Telephone.<sup>28</sup>

In accordance with article 68, paragraph 2, of the Rome Statute of the International Criminal Court, paragraph 28, paragraph 2, and with the exception of the principle of public hearings provided for in article 67, the Court authorized the Chambers to protect the victim, witnesses or accused from conducting any part of the trial in private Or by allowing the submission of evidence by other special electronic means.<sup>29</sup>

## **3.ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT:**

Under paragraph 68 of the Rome Statute of the International Criminal Court, paragraph 2, paragraph 2 of the Rome Statute of the International Criminal Court, an exception to the principle of public hearings provided for in article 67 is that the Chambers may protect the victim, witnesses or accused from conducting any part of the trial in secret or By allowing the submission of evidence by other special electronic means.<sup>30</sup>

## **4. THE ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS:**

This Protocol is one of the most important legal instruments that have dealt with the issue of electronic litigation in all its articles, some of which have already been discussed with regard to the conditions of the use of electronic litigation technology.

## **B - TECHNICAL MEANS IN E-LITIGATION:**

In the past, legal relations were mostly in the tangible physical world, and by traditional means of paper, but the scales changed. Today, modern technological means were introduced by the developments in the world, the most important of which are the dominance of electronic means, especially the modern

means of communication, which rely on the internet and its supports. The need to establish electronic judicial bodies that have helped to close the distance and remove barriers in all its forms between the parties to legal proceedings.

### **I. THE INTERNET SUPPORTS E-LITIGATION PROCEDURES:**

The scientific revolution has broken the geographical and political boundaries; it has made the world a small village. We face many challenges at a time when information can be transmitted simultaneously without any controls or limits. Hence, the risk of secrecy and fairness in dealing with modern scientific techniques increases.

The internet, which has bypassed geographical and natural barriers, has a wide variety of transactions, including e-mail, mailing lists and the World Wide Web, which is also called "W WW", also known as the "Web" Telenet. These electronic props contribute significantly to the activation of e-litigation and we will outline its supports as follows:

#### **THE E-MAIL:**

E-mail<sup>31</sup> is one of the most important pillars of the Internet in general, and the most used service, it is a service that helps to send and receive messages through digital devices through the Internet, these messages may be in the form of texts or graphics, or may be used to send audio files and animations In addition, e-mail enables a user to send mail to a specific individual, group, or group of users at the same time, as well as to allow many options for such correspondence, such as the ability to save, edit, Printing, and so on. Such communications are used in electronic litigation to receive and send judicial communications, judgments, case files, petitions, which the parties may send to their lawyers.

#### **WORLD WIDE WEB:**

Internet is a connected set of computer networks that include computers connected around the world, which exchange data by switching packets using the Internet Protocol (IP). The Internet offers many services such as the World Wide Web, communication technologies, e-mail, and FTP protocols. The Internet today represents a phenomenon that has a social and cultural impact in all parts of the world. It has changed the traditional concepts of various fields such as work, education, commerce and the emergence of another form of information society<sup>32</sup>. There are millions of web sites each with its own address, which is referred to as abbreviations, which serves as a regular address or phone number<sup>33</sup>. It is therefore a mainstay of electronic communication in all fields to be used in the judicial field. In judicial matters and criminal prosecutions across multiple regions, through the opening of websites, thus becoming a public electronic public facility.

### **THE WI-FI SERVICE:**

Is the Wireless Fidelity, a type of wireless technology, [1] a wireless network protocol that allows Internet devices without the need for Internet wires, one of the most common means of wireless data transmission at a fixed location, and is a trademark of Wi- Fi Alliance, an international association of companies, working in wireless LAN products and technologies.

The IEEE 802.11 standard is used to connect a set of information system devices (a computer, a router, a smartphone, a modem internet) into an information network to allow data transfer between them, and users can use it In other areas, which are voice and video telephony, domestic or international, and also emerged other permanent no less important than Wi-Fi, is the 3G, 4G, which do not need to connect, more practical, especially help the investigation process in places that do not There is a router<sup>34</sup>. This allows for the use of this property in criminal investigations and identification of the whereabouts of persons.

### **2. THE ELECTRONIC COURT:**

For the purpose of the application of electronic litigation procedures, there must be an electronic court, through which a group of judges will hear and adjudicate lawsuits; in other words, by virtue of legislation authorizing them to do so directly, In the sense of programming electronic judicial proceedings.

And litigation through the electronic court<sup>35</sup>, is a pillar of electronic litigation. It is considered as an information technology organization that allows litigants to register their case, present their evidence and attend trial sessions in preparation for reaching and executing the judgment through electronic means of communication.

The communication of the litigants without their physical presence, the initiation of litigation, the investigation and the hearing of witnesses through this pillar, particularly through the international territories<sup>36</sup>. The electronic court is a bipartisan technical space (the international network of interconnection + the court building) and judicial and administrative units on the network. These bodies receive judicial applications, case law, processing of electronic file programs, and provide renewed information on the latest developments in cases and judgments. This court also enables the litigants and their representatives, Prosecutors, witness preparation, data submission and direct contact with the staff of the Tribunal, at all times and from anywhere. The Court also provides new and sophisticated mechanisms for pursuing cases.

And to see the proceedings - and even attend sessions electronically - and decisions of the provisions with ease. It also provides transparency and speed in obtaining information. Accordingly, the processing of the court, its chambers, its administrative divisions and its executive will take on a technical nature, enabling judges and litigants to pursue their claims and attendance, record applications and contact court staff and

judges electronically.  
In general, electronic courts also need a variety of means, so that litigation can be conducted effectively and in a good manner. These means are:

- Website,
- The computer,
- Electronic records, in the form of "Pdf, Word"
- Audio Transmitters, Cameras, Microphones.

### **C - QUALIFYING MEANS IN E-LITIGATION (HUMAN POTENTIAL):**

The application of e-litigation procedures through the Virtual Judiciary requires the existence of three basic rehabilitation methods:<sup>37</sup>

#### **1. JUDGES SPECIALIZED IN E-JUDICIARY:**

They are referred to as electronic judges, a specialized group of regular judges, who conduct trials through a website, each in the electronic court, which has an online website within a judicial system that can be called the Judicial Information Service, And electronic registration in the electronic file, which is the mechanism of access to prove the right subject matter, through a sophisticated set of electronic procedures<sup>38</sup>. This component is achieved through the acquisition of intensive courses in computer science, communication systems and web sites, and the processing of their offices with the latest computer equipment, which will enable them to register the lawsuit electronically and follow up and review the process.

#### **2. ELECTRONIC COURT CLERK:**

In addition to the judges, we find other employees, who are represented by a group of jurists and specialists in computer and software technology, designing and managing websites, who are qualified to work in this field. And perform many duties in procedural work, the most important of which are:

And perform many duties in procedural work, the most important of which are:

- Recording and sending of claims with proof, or any other documents that may be sent by the scanner, and keeping the original for the purpose of sending it to the court in case it is requested,
- Schedule of meetings,
- Payment of fees electronically by means of electronic payment,
- contacting the parties to the case and informing him of attendance at the dates of the hearings after confirming the status of each of them, whether they are parties

to the case, witnesses or others before entering the court's virtual site before the judge,

- Follow-up of proceedings and presentation of hearings.

### **3. WEBSITE MANAGEMENT AND PROGRAMMERS:**

E-litigation requires the existence of site management and programming, entrusted to persons who are scientifically qualified in the field of informatics and electronic programming, and are often a group of professionals in the field of electronic work on technical devices and use the necessary electronic programs are outside the court usually or in the adjacent sections, The most important duties follow the progress of the trial proceedings, and address the failures that may occur in the devices and equipment during the pleading, as well as processing technical errors before they occur, and to protect the system from viruses. And to address the attempt hackers to penetrate the on the site of the court, in addition to helping the court clerks to carry out their technical duties and this allows the achievement of information and technical protection of electronic litigation data and procedures.<sup>39</sup>

### **4. ELECTRONIC LAWYERS:**

The term "electronic lawyer" refers to the lawyer who is entitled to register the case and plead to the electronic court, which represents a modern type of professional practice for the law firm, where knowledge of computer science and communication systems, design of programs and websites is required, Through the service provider in the offices of private lawyers to enable them to perform their duties in such a way that the lawyer performs the letter of the judiciary transparently and professionally so the lawyer must be fully prepared for this idea at the personal and office level.<sup>40</sup>

## **III - APPLICATION OF ELECTRONIC LITIGATION**

### **MECHANISM IN ALGERIA:**

In the last three years, the Algerian Justice Facility has adopted the idea of modernizing its public facilities and judiciary by establishing and applying new legal rules to deal with the problems that have resulted from developments in the field of communication technology. This is reflected in the introduction of its data in the field of litigation, Using a modern mechanism in the world of electronic litigation, remote video chat, which the Algerian legislator called "Vidéo-conférence" in the field of investigation and hearing witnesses.

In order to learn about Algeria's applications in this field, we must show the signs of adopting the idea of electronic litigation in Algeria (A), then the legal basis for electronic litigation in Algeria (B) and finally some applications on the ground in Algeria C.

## **A - SIGNS OF E-LITIGATION IN ALGERIA:**

Electronic litigation has started in Algeria since 2007 through the President's statement on the opening day of the judicial year 2007-2008 on 29 October 2007, which stated: "Justice reform is not an end in itself, but a progressive means of raising the judiciary to the challenges it poses. Process of internal and external transformations"<sup>41</sup>.

The draft law on this field was discussed by the Parliament, dealing with the subject of electronic litigation. The project was met with the tacit approval of the members of parliament. This is reflected in their statements, which were recorded in the minutes of the 19th public meeting held on Monday 24 November 2014, to further discuss the draft law on the modernization of justice<sup>42</sup>, and perhaps the most important of these statements are :

1- Salima Balqnish's statement, where she valued the facilities and the electronic management system, because any department in any sector is now transformed from a traditional work to the use of advanced devices and depends on its operation on the fast information system which will inevitably leads to:

- Transparency in action,
- Improve performance and reduce costs,
- Provide information at any time,
- Address bureaucracy,
- Treatment of Bribery,
- Overcoming the problem of geographical dimension between the states of the Algerian country,
- Keeping pace with the times and developments that occur daily, Ease the burden on the citizen.

2- Mr. Hisham Rahim's statement that the current draft law "Modernization of Justice" is a purely technical and procedural project dictated by the rapid technological development. It reflects the government's compliance with the modern information and communications world and will achieve the following:

- The prestige and credibility of justice,
- Promotion and strengthening of the judicial system,
- Rounding up the judicial administration of the citizen.

3. Mr. Fadel Sabian, acknowledged that the Ministry of Justice initiated and headed by the Minister of Justice to develop a modern and sophisticated information system for the introduction and technologies in all structures, and adaptation to electronic programs, in order to reach this sector to the strength of

proof in the field of knowledge of electronic management and access to the idea of e-government.

**B - LEGAL BASIS FOR ELECTRONIC LITIGATION IN ALGERIA:**

The idea of electronic litigation in Algeria finds its legal basis in international legislation, through international conventions or treaties, as well as its legal basis in its domestic legislation.

**1. THE INTERNATIONAL LEGAL BASIS FOR ELECTRONIC LITIGATION IN ALGERIA:**

The UN Convention against Transnational Organized Crime is the first and the most important international law to regulate this issue, dealing with the idea of "Videoconference" ", Through paragraph 18, article 18, which read as follows:" ... at the request of the other State, to hold a videoconference if it is not possible or desirable for the person concerned to appear personally in the territory of the requesting State Party. States Parties may agree to take over The hearing shall be conducted by a judicial authority of the requesting State Party and prohibited by a judicial authority of the requested State Party"<sup>43</sup>

**2. INTERNAL LEGISLATION FOR ELECTRONIC LITIGATION IN ALGERIA:**

In reference to Algeria's internal legislative system, we find a number of laws that touched upon the idea of modernizing public facilities, especially the sovereign facilities of the state, and considering that the study is limited to electronic litigation, we will review only developments in Algerian legislation in this area<sup>44</sup>, Accordingly, we find:

- Law N°. 15-03, on the modernization of justice,<sup>45</sup>

- Order N°. 15-02, amended and supplemented by the Code of Criminal Procedure.<sup>46</sup>

**2- A - LAW NO. 15-03 ON THE MODERNIZATION OF JUSTICE:**

The promulgation of Law 15-03, on the modernization of justice, is a shy but positive step for Algeria, compared with other Arab States, which remain hostage to traditional means of litigation. The law contains 16 articles. The idea of electronic litigation was discussed as follows:

In the third of the provisions of Article 1 thereof:

- Establishment of a central information system for the Ministry of Justice,
- To send judicial documents and referees electronically,
- The use of remote video chat technology in judicial proceedings.

In order to modernize the justice sector, the provisions of Article II were laid down, including the judicial and administrative judicial system, including the

Court of conflicts<sup>47</sup>, and article 9, which stated that Algeria had actually adopted the idea of electronic litigation by reporting and transmitting judicial proceedings via electronic means<sup>48</sup>.

The provisions of article 14 also add: "If the distance is required for the proper functioning of justice, the parties may be questioned and heard by teleconferencing."

The provisions of article 15 specify the scope of use of this technique in its three paragraphs, which read as follows: "The investigating judge may use remote video chat to question or hear a person and to conduct confrontations between several persons. The referee may also use video chat To hear witnesses, civil parties and experts. The governing body can consider cases of misdemeanors to resort to the same mechanism to receive the statements of a defendant in custody if agreed by the concerned and the Attorney General.

Finally, article 16, which established the venue for electronic litigation, was as follows: "Interrogation, hearing or confrontation using the remote video chat mechanism at the seat of the court closest to the residence of the person whose statements are requested is attended by the competent regional agent and the custodian.

## **2 – B - ORDER N°. 15-02 AMENDING AND SUPPLEMENTING THE CODE OF CRIMINAL PROCEDURE:**

In the sixth chapter, "Protection of witnesses, experts and victims", part of the second part of the investigation, the electronic litigation technique of the Algerian Code of Criminal Procedure, amended and supplemented, is contained in the first book under the heading "In the initiation of public proceedings and investigation".

Article 65 bis 27 states: "The arbitrator may, automatically or at the request of the parties, hear the witness anonymously by establishing technical means to conceal his identity, including hearing through remote video chat and using methods that do not allow the person to know and vote. . "

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

## **C - SOME ELECTRONIC LITIGATION APPLICATIONS IN ALGERIA:**

During the first year of its operation, 153 trials were conducted. This video chat technique was used to link the prosecution of the Supreme Court and the Council of State with the rest of the courts and tribunals, as well as in regular meetings between the heads of the councils, chambers and public deputies with the heads of courts and agents of the Republic, Remote areas, which are far from them, especially in the south.

It is worth mentioning that the first images that emerged for e-litigation in Algeria were on October 07, 2015 at the Court of Qulaia on the misdemeanors section headed by Judge Ben Bouza Abdel-Raouf. The electronic litigation at the international level is international:

- On July 11, 2016 between the Council of the district of Messila and the Council of Nanterre, France.<sup>49</sup>

- Trial between the Court of Justice of Setif and the Court of Loire, France<sup>50</sup>

### **CONCLUSION:**

After our modest study on e-litigation, we must draw up the conclusions we have reached and the suggestions that may result from it to assist the Algerian legislator in developing its effective legislation and contribute to enriching the Algerian legal library.

#### **1. RESULTS :**

- Electronic litigation requires a number of means, including:

- Legal, whether of the international system, regional or internal,

- Technical means, which are no less important than the first, and are the Internet and its pillars,

- Rehabilitation means, namely the virtual human staff, judges and lawyers, court clerks, as well as the competent in the world of informatics, engineers and technicians.

- The term e-litigation is one of the modern terms and concepts, since it was not until a few years after the spread of the term e-government. If the term e-government is concerned with all government services, the term e-litigation is concerned with the services of judicial bodies. The International Link Network, in addition to the building of the judicial system in question, allows the litigants to register their case, present their evidence and attend court sessions in order to reach a fair judicial ruling and implement it through modern electronic means of communication.

- The application of this technology in Algeria has come at a slow pace, and although it is a qualitative leap in the Arab world, based on international and national legal foundations.

#### **2. RECOMMENDATIONS:**

- Developing the information system of the Judiciary Database, according to the latest internationally approved and scalable programming systems.

The reform of the legislative system and its unification, where we find some kind of injustice in the Algerian standardization, as the law 15-03, only

sixteen articles, and the Algerian legislator, there was no amendment to the Code of Civil Procedure and Administrative, the latter, which is the first brick of litigation in Algeria , Such as introducing a full chapter on e-litigation.

- Linking the websites of the Ministry of Justice, and the judicial bodies located on all Algerian territory, both administrative and administrative, or the Court of Conflicts.

- Adding a window to the judicial bodies' websites, making it easier for the citizen to process e-litigation, with explanations of the pdf format, and other visuals on how to extract sentences, send documents, etc.

- Conducting periodic training courses in the field of e-Judiciary for all judiciary personnel, including judges, lawyers, custodians and technicians to keep abreast of any development in the field of scientific technology, and to achieve greater protection of electronic cases from the risk of penetration in order to preserve the confidentiality of information and judicial transactions,

- Amending the Penal Code by increasing the punishment of electronic crimes in the field of electronic litigation to achieve greater criminal protection.

#### **REFERENCES:**

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<sup>1</sup> - *The first attempt to settle disputes over cyberspace came back to 1996 when the Judicial Law Institute and the American Arbitration Association and the National Center for Informatics Research and the Law and Information Center administered and supervised the Virtual Judge Program, the main objective of which was to provide quick solutions to Internet disputes through an intermediary, Neutral is an expert in arbitration and laws governing the activities of the Internet or the law of e-judiciary, and achieve this goal by the user of the Internet to send his complaint to that body by e-mail and then the body By choosing a neutral judge to adjudicate the dispute. The judge's decision shall be devoid of legal value unless it is accepted by the parties and this service is free of charge*

Salah Al-Manzalawi: *The Law Applicable to E-Commerce Contracts*, (Arabic Book), New University Publishing House, Alexandria, 2007, pp. 163-164.

<sup>2</sup> - Safwan Mohamed Shdeifat, "Investigation and Remote Criminal Trial through Videoconference Technology", *Studies in Shari'a and Law Sciences*, (Arabic art) Deanship of Scientific Research, University of Jordan Volume 41, Issue 1, 2015, P 353.

<sup>3</sup> - Hazem Mohammed Alshura, *Litigation and e-courts* , (Arabic Book), the of Culture, Jordan, 2010, p 57; Esmat Abdel Meguid Bakr, *The role of scientific techniques in the development of the contract*, (Arabic Book), House of scientific books, Beirut, Lebanon 2015, p. 514.

<sup>4</sup> - Asad Fadhel Mandil, *Remote Litigation, Legal Study*, (Arabic Book) Faculty of Law, University of Qadisiyah, Iraq, 2014, p 04.

<sup>5</sup> - Khalid Mamdouh Ibrahim, *Electronic Litigation: Legal action Litigation and its Proceedings before the Courts*, (Arabic Book) Dar alfikr aljamiei, Alexandria, 2008, p 13.

<sup>6</sup> - As'ad Fadel Mandil, *op Cit*, P 04.

<sup>7</sup> - Khaled Mamdouh Ibrahim, *op Cit*, P 36.

<sup>8</sup> - Hadi Hussein Al-Kaabi and Naseef Jassim Mohammed Al-Karawi, "The Concept of Remote Litigation and its Accessories", (Arabic art) *Journal of the Detective Ornaments of Legal Sciences*, First Issue, 8<sup>th</sup> Year, 2016, p 284.

<sup>9</sup> - Khaled Mamdouh Ibrahim, *op Cit*, P 36.

<sup>10</sup> - , "The Electronic Litigation System is a Mechanism for the Success of Development Plans", (Arabic art) *Journal of the Almufkir*, No. 13, February 2016, Faculty of Law and Political Science, Biskra University, P 218.

<sup>11</sup> - Sayed Ahmed Mahmoud, *The Role of Computers in the Judiciary*, (Arabic Book) Dar Al-Nahda Al-Arabiya, Egypt, 2008, p 30.

<sup>12</sup> - Laila Osmani, *op Cit*, P 218.

<sup>13</sup> - Hossam Mohamed Nabil, "Electronic Litigation and Emerging Justice", *Journal of the Language of the Age*, 09-12-2017, : <http://aitmag.ahram.org.eg/News/86774.aspx>

<sup>14</sup> - Khaled Mamdouh Ibrahim, *op Cit*, P 40.

<sup>15</sup> - *Ibid*, P 41.

<sup>16</sup> - This is one of the important advantages of this type of judiciary, which contributes greatly to reducing the evasion of the judiciary by many of its qualified, as one of the biggest reasons for this is after the place of appointment, and the difficulty of transition, delayed transport to the city desired a significant delay. In this context, the Ministry can provide some incentives for judges to make more cases in this type of judiciary, such as exempting from daily attendance those who can complete a certain number of cases electronically per month, and other incentives Hossam Mohamed Nabil, *ibid*

<sup>17</sup> - Maria Iskandar Al-Badri, "Litigation and Electronic Courts", *Al-Hawar almutamadinMagazine*, 02/12/2008: [www.m.ahewar.org/s.asp?aid](http://www.m.ahewar.org/s.asp?aid)

<sup>18</sup> - Laila Osmani, *op Cit*, P 218.

<sup>19</sup> - Safwan Mohamed Shdeifat, *op Cit*, P P 354 – 355.

<sup>20</sup> - We will include some conditions written in the Additional Protocol to the European Convention on Mutual Judicial Assistance in Criminal Matters, signed in Strasbourg on 8 November 2001 and entered into force on 01/02/2004, as this technique is the result of the fight against corruption and crimes against International level, adopted by States in order to facilitate the process of international investigation and litigation.

<sup>21</sup> - « La Partie requise consent à l'audition par vidéoconférence pour autant que le recours à cette méthode ne soit pas contraire aux principes fondamentaux de son droit et à condition qu'elle dispose des moyens techniques permettant d'effectuer l'audition.», Voir : le contenu du « Projet de 2ème Protocole Additionnel à laConvention Européenne d'entraide judiciaire en matière pénale » en ligne : <https://rm.coe.int/09000016804f87db>

<sup>22</sup> - « Si la Partie requise ne dispose pas des moyens techniques permettant une vidéoconférence, la Partie requérante peut les mettre à la disposition de la Partie requise avec l'accord de cette dernière.»

<sup>23</sup> - Salem Omar, *International Criminal Prosecution in Criminal Matters, Comparative Study*, (Arabic Book) Dar al-Nahda al-Arabiya, Egypt, 2001, p 197.

<sup>24</sup> - « Si une personne qui se trouve sur le territoire d'une Partie doit être entendue comme témoin ou expert par les autorités judiciaires d'une autre Partie, cette dernière peut demander, s'il est inopportun ou impossible pour la personne à entendre de comparaître en personne sur son territoire, que l'audition ait lieu par vidéoconférence, conformément aux paragraphes 2 à 7. »

<sup>25</sup> - Salem Omar, *op Cit*, P 193.

<sup>26</sup> - Hadi Hussein Al-Kaabi and Naseef Jassim Mohammed Al-Karawi, *op Cit*, P 313 ets.

<sup>27</sup> - decision n A / RES / 51/162, General Assembly of the United Nations:

<http://www.un.org/arabic/documents/GARes/51>

<sup>28</sup> - Model Law on Electronic Commerce Online: <https://www.uncitral.org>

<sup>29</sup> - Model Law on Electronic Signatures Online: <https://www.uncitral.org>

<sup>30</sup> - Farouk Mohammed Sadiq al-Araji, *The International Criminal Court, Its Origin, Nature and Statutes*, (Arabic Book) Dar al-Khalud, Lebanon, 2012, p 252.

<sup>31</sup> - Rome Statute of the International Criminal Court Online:

[http://www.un.org/arabic/documents/basic/rome\\_statute.pdf](http://www.un.org/arabic/documents/basic/rome_statute.pdf)

<sup>32</sup> - Heinz Tschabitscher, "What is Email?" [www.lifewire.com](http://www.lifewire.com), Retrieved 17-3-2018. Edited.

<sup>33</sup> - (Internet) consists of the prefix "inter" which means "between" and "net", meaning "network", and the name denotes the structure of the Internet as a "network between networks" or a network of "However, there was a mistake in the Arab media to call the "International Information Network", thinking that the inter clause in the name is the abbreviation of "international" meaning "international."

As its name implies, the Internet is a network between several networks, each managed in isolation from the other in a decentralized way. None of them is dependent on the operation of the Internet or on the other. It may also be used internally in various computer and network technologies. These networks communicate with each other through gates connected to a standard shared protocol, an Internet protocol.

However, in the current era, the vast majority of IP-based networks are used internally because of technical advantages and because of the accumulated experience in its operation and maintenance, as well as the widespread use of hardware and operating systems that implement this protocol.

<sup>34</sup> - Khaled Mamdouh Ibrahim, *op Cit*, P 59.

<sup>35</sup> - Melanie Pinola, "Understanding Wi-Fi and How it Works" [www.lifewire.com](http://www.lifewire.com), Retrieved 23-6-2018. Edited.

<sup>36</sup> - See : Safa Otani, "Electronic Court - Concept and Practice", (Arabic art) Damascus University Journal of Economic and Legal Sciences, vol. 28, No. 1, 2012, p 166 ets.

<sup>37</sup> - Among the most important recommendations of the International Conference, held in Cairo on 2-4 June, the State urged the establishment of an international entity that would help coordinate between government agencies and civil society institutions to prosecute criminals wherever they may be and to ensure the dissemination of safe dealing with international networks. Establishment of an independent electronic court to decide on abuses and electronic crimes. See: *Ibid*, P 173.

<sup>38</sup> - Hadi Hussein Al-Kaabi and Naseef Jassim Mohammed Al-Karawi, *op Cit*, P 296.

<sup>39</sup> - Hazem Mohammed Alshura, *op Cit*, P 62.

<sup>40</sup> - The order was issued by the judge to a group of computer specialists. After they prepare the spoilers or their agents and start the trial, and they are recorded electronically by video and audio, so that the judge hears the information of their words and arguments and their defense as well as contact with the staff, and ask them regarding the administrative and procedural matters related to the proceedings while continuing the process of photography and transmitted to the site of the Judicial Information Department and the contents of the liabilities within the This system.

<sup>41</sup> - Safa Otani, *op Cit*, P 176 ets.

<sup>42</sup> - Mohammed Al-Alfi, "e-Court between Reality and Hope," 6<sup>th</sup> E-Government Conference "New Public Administration and e-Government" Dubai, United Arab Emirates, 9-12 December 2007, p 19.

<sup>43</sup> - Laila Osmani, *op Cit*, P 222.

<sup>44</sup> - *Proceedings of the Nineteenth Public Session held on Monday, 24 November 2014, Continuation of the discussion of the draft law on the modernization of justice, Seventh Legislative Period, Fifth Session, National People's Assembly, Official Gazette of the People's Democratic Republic of Algeria, 24 December 2014, Third Year, No. 140.*

<sup>45</sup> - *Presidential Decree N°. 02-55, which includes the ratification of the United Nations Convention against Transnational Organized Crime, adopted by the General Assembly of the United Nations on 15 November 2000, of 05 February 2002, Official Journal of the People's Democratic Republic of Algeria February 2002, N°. 09, p 61.*

<sup>46</sup> - *We will only review the articles that have touched upon the idea of e-litigation, to make it clear that Algeria is in the process of technological development and global riding, by adopting the idea of electronic litigation in its legislation, without going into the procedures related to it.*

<sup>47</sup> - *Law N°. 15-03 on the modernization of justice, dated 1 November 2015, Official Journal of the People's Democratic Republic of Algeria, issued on 10 February 2015, No. 06, p 04.*

<sup>48</sup> - *Order N°. 15-02, containing the amended and amended Penal Code of Procedure N°. 66-155 of 08 June 1966 of 23 July 2015, Official Journal of the People's Democratic Republic of Algeria, issued on 23 July 2015, No. 40, p.*

<sup>49</sup> - *Article 20 - Law 15-03 on the modernization of justice: "A central information system for the automatic processing of data relates to the activity of the Ministry of Justice and its institutions as well as the judicial bodies of the regular judicial system, the administrative judicial system and the court of conflict."*

<sup>50</sup> - *Article 90 - Law N°. 15-03 on the modernization of justice: "... documents, court verdicts and documents can be communicated and sent electronically ...".*