



## PRIVACY OF DIGITAL LITIGATION IN COMMERCIAL DISPUTES

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### **Abstract:**

*Digital litigation is a quantum leap in the field of judicial justice because of its importance in facilitating litigation procedures and reducing the burden on litigants. It has created the information judicial system as a mechanism for resolving commercial disputes, under which electronic commercial courts have resorted, as it is a system based on foundations, rules, and judicial rulings in line with the age of information and digital technology, whose ultimate goal is to achieve justice and improve the quality of judicial work. Despite its prevalence in international and domestic legislation, it still suffers from many shortcomings, especially at the level of commercial issues.*

**Keywords:** *Electronic litigation, electronic courts, commercial disputes, problems.*

### **INTRODUCTION:**

The new information age, which included all fields as a result of the information revolution and the emergence of the use of modern technologies related to the field of communication and technology, facilitated the exchange of information and simplified many procedures by relying on the Internet and computers.

The ease imposed by modern technologies has opened the door for customers to conclude commercial contracts and electronic transactions and eliminated spatial and temporal barriers and restrictions.

To keep pace with this proposal and take care of the interests of customers, and reduce the volume of traditional requests and the process of moving between departments and state institutions, e-governance was the best solution for this.

But the matter was not limited to the use of technology in state administrations and institutions, but also extended to the judiciary in a desire to improve the judicial, investment, and economic environment... etc. by simplifying judicial procedures and speed in the dispute resolution process, especially when it comes to the commercial aspect based on speed and credit.

To ensure the success of sustainable development plans, the State has sought to modernize the justice sector in many countries by adopting the electronic litigation system or remote litigation by adopting modern methods.

However, despite the constant quest to develop and reduce the costs and financial burdens on the parties to the lawsuit, the matter is still shrouded in many shortcomings and ambiguities due to the lack of the necessary foundations and ingredients that guarantee a fair trial for all parties.

Therefore, this study raises the following problem: Can electronic litigation be relied upon to settle commercial disputes? What are the most important foundations and problems raised by this topic?

To answer this problem, we will divide this study into two main axes; in the first, we deal with the organization of the electronic commercial court, and in the second axis, we will present the reality of the electronic commercial trial.

### **First: Organization of the Electronic Commercial Court:**

The use of modern technology within litigation procedures to reach the establishment of the electronic court is the most important application of globalization, and the use of information technology, especially in the procedural field.

The term "electronic court" is relatively recent compared to its implementation on the ground, so we have to define its concept, and then indicate the elements on which it is based and which are used to facilitate procedures and develop the judicial facility.



## 1- THE CONCEPT OF E-COURT:

The term "electronic court" or "electronic litigation" is one of the emerging terms as a result of the invasion of the information revolution in the field of the judiciary, and it corresponds to the term "traditional litigation" so that they differ from each other in terms of the means used in implementation, which have shifted from the paper side to electronic<sup>(1)</sup>.

Part of the jurisprudence defined the "electronic court" as: «the process of transferring litigation documents electronically to the court via e-mail, where these documents are examined by the competent officer and a decision is issued on them to accept or reject and a notice is sent to the litigant informing him of what has been done regarding these documents»<sup>(2)</sup>.

It is noted through this definition that it includes the process of transferring documents without being subjected to electronic litigation procedures, which makes this definition incomplete.

Others have defined it as the "computerization of judicial procedures by converting traditional procedures from paper form to electronic form, where computerization is carried out only in procedures and not subject matter" <sup>(3)</sup>. It is noted through this definition that it linked the concept of electronic litigation to computerization.

Another also argued that: «the authority of a specialized group of regular judges to hear the case and initiate judicial proceedings by electronic means developed within an integrated information judicial system or systems of parties and means, adopting the approach of the technology of the international network (Internet) and electronic computer file programs to consider and adjudicate cases and implement judgments to reach a quick resolution of cases and facilitate litigants»<sup>(4)</sup>.

It was also defined as: «obtaining forms of judicial protection through the use of electronic means to assist the human element, through technical procedures that include the realization of the principles and guarantees of litigation under legislative protection for those procedures under the general rules and principles of the Code of Procedure, taking into account the special nature of electronic means»<sup>(5)</sup>.

Some have also defined it as: "the authority of the Specialized Judicial Court to adjudicate electronically the dispute before it through the international connection network (Internet), and by relying on electronic systems and ultra-modern technical mechanisms to speed up the settlement of disputes and facilitate the litigants"<sup>(6)</sup>.

As for these definitions, they were clearer and more comprehensive, and electronic litigation procedures were given their right of interpretation.

Accordingly, an electronic court or remote litigation can be briefly defined as: "a judicial system directly linked to the Internet and the e-mail of litigants in which computers or the like are dealt with, and this is by initiating all procedures until the case is decided electronically."

In this regard, it should be noted that application concerning electronic commercial courts is still not possible, as the practical reality is still limited to the commercial section and the civil section within the traditional courts.

## 2- ELEMENTS OF THE ELECTRONIC COMMERCIAL COURT:

The electronic litigation system or electronic court is based on a set of components and requirements as a judicial system that keeps pace with technological progress in all fields, and this is to facilitate its application in the field, and the most important of these requirements is the following:

### 2.1. Legal Elements:

The law is one of the basic elements for the adoption of the electronic court by the state, where the legislative authority works to control the legal and technical terminology and indicates how to apply them and the procedures followed for this <sup>(7)</sup>. In general, many States have provided for this, the most important of which are:

- **Model Law on Electronic Commerce:**

At its 85th plenary session of 1996, the United Nations General Assembly approved the Model Law on Electronic Commerce, where the Commission affirmed that its adoption of the law would assist



States parties in regulating the use of paper alternatives and the storage of information, and recommended the need to draft legislation to strengthen this in the absence of such legislation<sup>(8)</sup>.

- **Model Law on Electronic Signatures:**

On 12 December 2001, the United Nations Commission developed the Model Law on Electronic Signatures, recommending, through its preamble, that all States parties take account of this law when drafting or amending their laws to bring them into line with the latest developments in this area<sup>(9)</sup>.

- **United Nations Convention against Transnational Organized Crime:**

This Convention, in its content, in particular in article XVIII, paragraph XVIII, recognizes the use of electronic audio-visual sessions, as it states that the State Party may, at its request, hold meetings by videoconference if the person concerned is unable to appear before it, and this shall be in accordance with the agreement between States<sup>(10)</sup>.

- **Law No. 15-03 on the modernization of the justice sector:**<sup>(11)</sup>

This law dealt with the idea of electronic litigation and the use of electronic means in regulation through its articles 19, which state:

- ✓ Develop a central information system for the Ministry of Justice.
- ✓ Using modern technologies in sending and notifying judicial documents and procedures electronically.
- ✓ Use of video chat remotely during judicial proceedings. <sup>(12)</sup>

Article 14 of Law 15/03 enabled the interrogation and hearing of parties through remote video chat whenever required by distance or in the application of the proper administration of justice.

- **Law No. 15-02 amending and supplementing the Code of Criminal Procedure:**<sup>(13)</sup>

Through this law, the legislator affirmed its desire to use electronic litigation through Chapter VI of Chapter Two, entitled Protection of Witnesses, Experts, and Victims, which allowed the possibility of hearing witnesses and experts through technical means and remote video chats.

## 2.2. Technical Components:

The use of electronic litigation requires a set of technical elements that reflect the spatial appearance of courts and judicial councils, through which judicial procedures are initiated and followed so that there is communication between lawyers and the court and between it and litigants, and among these components are the following:

- **Equipment and devices:**

The electronic court must be linked to several computers to deal with information and data, analyze, program, show, save, send, and receive information and data<sup>(14)</sup> through communication with the Internet, which allows the process of linking computer systems to each other to share information with others at the same time, allowing the exchange of files of all kinds via e-mail<sup>(15)</sup>.

The courtroom is equipped with a main computer, the room is equipped with audio and video transmission devices, and it is linked to internal communication devices between sections and offices to facilitate the exchange of files and documents electronically<sup>(16)</sup>.

Make sure to allocate a website for the court that enables the concerned persons to register or track their cases without the hassle of traveling.

- **Create an electronic record containing case data :**

This shall be done to preserve the data of the case and all information related to it, and the electronic record is considered a repository of the electronic court, in which the case files are kept to avoid any change in the content of the file from the date of registration until the issuance of the judgment <sup>(17)</sup>.

## 2.3. Human Assets:

To promote electronic litigation and electronic courts, cadres must be trained and qualified to practice electronic litigation procedures, including:

- **Website Book (Seizure Book) :**

They are a group of employees entrusted with the task of registering and sending the lawsuit, preparing the schedule for the sessions, collecting the fees for the electronic lawsuit, following up



on the latter, contacting the parties to the lawsuit, and ensuring their status before entering the site<sup>(18)</sup>.

- **Judges:**

These people initiate litigation procedures remotely through a website, with the help of specialized employees in this field, who can consider and follow up the electronic case (installation - postponement - request for documents ...) and then record this audio and video by managing the trial session, hearing witnesses and presenting the facts until the issuance of the judgment in the dispute<sup>(19)</sup>.

- **Professionals:**

They are a group of administrators working on programming and managing websites, who are located outside the courtroom to follow up on the progress of the trial proceedings and address technical malfunctions and errors that may hinder the conduct of the hearing<sup>(20)</sup>.

- **Lawyers:**

They are the persons who are entrusted with the task of defending their clients and are entitled to register the case and plead electronically within the virtual court<sup>(21)</sup>.

**Second: The reality of the electronic commercial trial:**

Electronic trial in commercial disputes depends on the use of modern means of communication, through which data and information are circulated, which must be ensured confidentiality and privacy.

However, the practical reality often encounters difficulties and problems raised by the new use of technology in this field, which requires learning about the experiences of the leading countries in this field to benefit from their experience and gains.

**1- Problems of applying the electronic litigation system to commercial disputes:**

No one denies the advantages provided by the electronic litigation system within courts and judicial councils, as it has facilitated procedures and saved a lot of effort and time, but it still suffers from many shortcomings and difficulties, including:

**1.1. Legal problems:** mainly represented in:

- The absence of a law regulating the provisions of electronic litigation in general, and the provisions of electronic litigation in commercial disputes in particular, despite the existence of some scattered legal texts (previously referred to above), but this is still insufficient, and this is due to the urgent need for a set of legal texts that show the various procedures and how to implement them, as well as ensure the protection of documents and data circulating through electronic media <sup>(22)</sup>.

- Prejudice to the principles of a fair trial: With the practical application of electronic litigation, the problem of compromising the principles of a fair trial, which are guaranteed by law, such as the principle of publicity, orality, confrontation, the principle of equality, and the right of defense, can arise, but this can only be achieved if there is a problem in sending or receiving documents, or in the absence of technical means for the litigants, which negates the principle of equality usual in an ordinary trial <sup>(23)</sup>.

- Lack of conviction in the means of proof provided: It is customary in commercial law is the freedom of proof <sup>(24)</sup>, and therefore the litigants can provide whatever evidence they want, but the problem lies in: Is it invoked electronically? And its acceptance by the judge as a means of proof? The evidence and proof must be submitted electronically, so can the judge derive the solution from the computer screen, or will he demand that the evidence be submitted on paper and the trial remains electronic and thus return to the traditional system?

- Collision with confidentiality is found in certain commercial disputes.

**1.2. Technical and technical problems:** represented in:

- ✓ The possibility of hacking information systems and attacking the electronic court system.
- ✓ Obtaining confidential information for disputing traders, thus contradicting the principle of credit and confidentiality guaranteed by the Commercial Code.
- ✓ Forgery of documents.
- ✓ The spread of cybercrime obstructs the conduct of electronic trials.

✓ Weak infrastructure for the electronic communications sector, especially in developing countries<sup>(25)</sup>.

✓ Increase the costs and expenses of the lawsuit.

## 2- Experiences of some countries of the world in electronic commercial courts:

The majority of Arab or third-world countries still rely on the traditional system, despite the use of computers within their courts, but its use remains limited to some jobs and not others. On the other hand, many other countries have used this system at different stages, including:

- **Germany:** Electronic litigation has been used heavily in the field of real estate and the process of selling it in the public auction, not to mention the registration of companies and all related legal services, as well as transactions related to the commercial registry, as the number of visitors to the site reached about 4.1 million people per day. Beginning in 2008, the use of electronic filing of newspapers and memoranda before federal courts were expanded, although the traditional system is still in force with regard to the discussion of litigants and the conduct of the case. <sup>(26)</sup>

- **Singapore:** The first electronic court specialized in settling disputes related to electronic commerce and transactions on the Internet was established in 2000, where the parties submit a complaint by entering the court's website and filling out the form designated for this, where he is given a special number for his case <sup>(27)</sup>.

- **United States of America:** The use of the electronic litigation system in the WMA has become a reality, as 25% of federal courts use this technology in courtrooms, which are managed and supervised by a member of the courtroom, but the process of filing a lawsuit is through a dedicated website and then began to be used in 1999 <sup>(28)</sup>.

- **Saudi Arabia:** The Kingdom of Saudi Arabia has established the first court to operate using an electronic litigation system in Jeddah, starting with the electronic registration of the case and ending with the issuance of the judicial ruling, as this is done through the plaintiff's access to the court's website to initiate and follow up all procedures <sup>(29)</sup>.

- **Morocco:** Concerning commercial cases, Morocco has allocated the website of the Ministry of Justice to follow up on the case file, so that you can access the site and choose the procedure to be carried out by browsing the office of the Commercial Court Registry at the level of Casablanca, Rabat, Avader, and Marrakech, as well as the registry of the courts of first instance in Rabat<sup>(30)</sup>.

## CONCLUSION:

Finally, we conclude that the use of electronic litigation to settle commercial disputes is based on abandoning traditional procedures based on paper pillars in litigation and shifting to electronic procedures based on the use of electronic means, communication, and information technology, as they differ among themselves in terms of form, but the content remains the same.

The use of electronic litigation technology is a leap in the field of judicial work, imposed by the necessity of practical life that has kept pace with technological development in all fields, which necessitated intervention to modernize the judicial system.

In this study, we have concluded some results:

✓ The emergence of the term e-litigation coincided with e-government, which spread in various public sectors.

✓ Electronic litigation procedures require the concerted efforts of the various actors in this sector, not to mention the need for specialized technicians.

✓ Due to the widespread use of electronic litigation in some countries, especially in commercial disputes, it has proven effective in supporting electronic transactions, as it is suitable for resolving simple disputes and in large quantities at the same time.

✓ This system aims to reduce the effort and expenses spent in the courts.

✓ Keeping pace with electronic litigation with the speed of the Commercial Law and the procedures and dates followed in accordance with it.

- ✓ Algerian courts are still far from making optimal use of the electronic litigation system to achieve their goals, and therefore, to achieve the greatest profitability in this area, we recommend the following:
- The need to update and expand the Civil and Administrative Procedures Law in line with the requirements of electronic litigation.
  - Maintaining information security with specialized techniques and means.
  - Reducing procedures and deadlines to suit the electronic aspect on the one hand, and with the developments of the commercial law and its disputes on the other hand.
  - Pay the lawsuit fee using electronic payment methods.
  - Preparing the courts with material and human requirements to become compatible with the application of this system.
  - Work on the application of electronic reporting.
  - Training judges and clerks to use the electronic litigation system.
  - Creating an electronic portal for each court to serve the litigant and all citizens.

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