

## ***Breach of litigant's guarantees in remote litigation***

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### **Abstract**

Scientific and technological development has led to the use of modern technologies in all fields. The information technology system has moved to the justice facility, where the transition towards the digital world has enabled the justice sector to use information and communication technologies through the transition from the regular justice system, which relies on paper files, to the electronic justice system, which integrates information technology in order to facilitate access to justice and the promotion of judicial governance, as well as the development of remote judicial services.

Despite all these benefits of tele-litigation, the application of tele-litigation runs into several obstacles and obstacles and may compromise the litigant's guarantees.

**Keywords:** Remote Litigation, E-Litigation, e-Court, Digitization of Justice

ملخص:

### ***الإخلال بضمانات المتقاضي في التقاضي عن بعد***

أبرز التطور العلمي والتكنولوجي استعمال التقنيات الحديثة في جميع المجالات، وقد انتقل العمل بنظام تكنولوجيا المعلومات إلى مرفق القضاء، حيث يمكن التحول نحو العالم الرقمي قطاع العدالة من استخدام تكنولوجيات الإعلام والاتصال من خلال الانتقال من نظام القضاء العادي الذي يعتمد على الملفات الورقية إلى نظام القضاء الإلكتروني الذي يقوم على ادماج تكنولوجيا المعلومات من أجل تسهيل اللجوء إلى القضاء وترقية أساليب التسيير القضائي إضافة إلى تطوير الخدمات القضائية عن بعد.

ورغم كل هذه المزايا التي يوفرها التقاضي عن بعد فإن تطبيقه يصطدم بعدة عقبات وعراقيل كما أنه قد يمس بالضمانات الممنوحة للمتقاضي.

**الكلمات المفتاحية:** التقاضي عن بعد، التقاضي الإلكتروني، المحكمة الإلكترونية، رقمنة العدالة، المحادثة المرئية

## *Violation des garanties du justiciable dans le contentieux à distance*

### **Résumé :**

Le développement scientifique et technologique a abouti à l'utilisation des technologies modernes dans tous les domaines, et surtout aux travaux du système informatique vers la justice, où le passage au monde numérique a permis au secteur d'utiliser les moyens de technologies de l'information et de la communication en passant du système classique qui repose sur les dossiers papier au système de justice électronique, qui repose sur l'intégration des technologies de l'information afin de faciliter l'accès à la magistrature et d'améliorer les travaux judiciaires, en plus de développer les services judiciaires à distance pour le citoyen.

Malgré tous ces avantages procurés par le contentieux à distance, son application se heurte à plusieurs obstacles et obstacles, et elle peut affecter les garanties accordées au plaideur.

**Mots Clés:** Contentieux à distance, e-contentieux, e-tribunal, numérisation de la justice, Visio conférence

## Introduction :

The uproar caused by technology in various fields has led to a profound change in the relationship between society and the State authorities in legal situations, especially the judiciary, which has endeavoured to interact positively by the public authority and to develop all technological means within the framework of digitization of the justice sector to facilitate proceedings and to facilitate litigation mechanisms for litigants based on the Internet, camera and microphone. How does tele-litigation improve judicial work? To what extent do they affect fair trial guarantees?

In response to this problem, the descriptive approach has been used to define different concepts and differentiate them from similar terminology, as well as to adopt the analytical approach through the analysis of legal texts, especially the Constitution of 2020<sup>1</sup> and the most recent amendment to the Code of Criminal Procedure. To illustrate and clarify all these meanings, the subject has been divided in two part :

**The first topic:** Concepts on the Remote Litigation System

**The second topic:** Violation of litigant's guarantees in remote litigation

### The first topic:

#### Concepts on the Remote Litigation System

The judiciary seeks to enshrine the rule of law and the right through the modernization of justice and to promote it both in legislative, regulatory and service terms, because it ensures greater effectiveness by considering the judge as the protector of individual and collective rights as well as public freedoms. This requires modernization in accordance with modern techniques that facilitate service, provide effort and reduce expenditures.

And before talking about the breach of remote litigation by the guarantees dedicated to the litigant, a clear picture of remote litigation must be given through exposure to each of its concepts (**first requirement**), and then its requirements and obstacles (**second requirement**).

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<sup>1</sup>-Constitution of 2020, promulgated on 30 December 2020, c. No. 82

## **first requirement: the concept of remote litigation**

In order to arrive at a clear concept of remote litigation, we will be exposed to both its definition and its characteristic statement (section I) and then distinguish it from other similar systems (section II).

### **First section: Definition and characteristic of remote litigation**

In this section we address both the definition of remote litigation (First) as well as the identification of the most important characteristics of it (Second).

#### **First : Definition of remote litigation**

Tele-litigation or e-litigation has been defined as "a new information judicial system whereby all litigation proceedings are applied through the electronic court through computers connected to an Internet company and via e-mail for the purpose of speeding up the proceedings and facilitating their proceedings against litigants and executing judgments electronically<sup>1</sup>.

It is noted in this definition that remote litigation is defined by means of the application of the tele-litigation system, namely the electronic court, computers, the Internet..... as well as by the benefits of the application of this system. It is also defined as "the power of a group of judges to hear cases and initiate legal proceedings by electronic means developed in informational judicial systems adopting the digital method through the software, rather than the paper method of receiving regulations and judicial requests and hearing cases in computer programs adopting the method of pre-determination of the proceedings. This system allows judges and parties to proceedings to submit written and personal data unnecessarily to attend court through websites within the network. in order to reach a speedy dismissal of proceedings and facilitate litigants "<sup>2</sup>.

This definition is more detailed than previous identification, as it has been exposed to the human element necessary to apply the tele-litigation system, but it has been limited to judges examining proceedings without mentioning other persons who have a role in electronic litigation, as has been shown by the difference in electronic litigation procedures from ordinary litigation.

Lastly, electronic litigation has been defined as "a new information technology judicial system that allows crumblers to register their claims, present their evidence and attend court hearings in preparation for reaching and enforcing the judgement

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<sup>1</sup>-Al-Karawi Nassif, The Concept of Tele-litigation and its Requirements, article published in the Journal of Investigator Al-Hali for Legal and Political Sciences, vol. 8, No.1,2016, p. 283.

<sup>2</sup>-Hazem Mohammed Al-Shara 'a, Electronic Litigation and Courts, Culture Publishing House, p. I 2010, p. 57.

through electronic means of communication via Internet-linked computers and via e-mail"<sup>1</sup>.

It appears that this definition shortened the electronic litigation system and focused on the main distinction between electronic litigation and ordinary litigation, namely the adoption of electronic media in litigation from the registration of the case and the presentation of evidence and the attendance of hearings until the judgement was handed down and executed.

## **Second : Characteristics of remote litigation**

Through previous definitions we can drive a set of characteristics of tele litigation:

1. Conversion from paper system to electronic system: Since one of the most important features of tele-litigation is the replacement of paper documents by electronic documents, the e-mail is the legal bond on which the parties to the dispute rely, resulting in the disposal of hard-to-keep paper files<sup>2</sup>.
2. Exchange and send documents by electronic means: which is legally termed the moral delivery of documents by transferring files and documents on the line without resorting to the outside world<sup>3</sup>.
3. Moving from traditional proof to electronic proof : litigation proceedings are established by electronic certification and signature that confer authenticity on electronic documents, and adopted by Algerian legislation through the Civil Code in article 323 bis<sup>4</sup>, as well as by the 15- 04 Law<sup>5</sup> on Ratification and Electronic Signature.
4. Payment of judicial expenses and fees through electronic means of payment. Instead of traditional money, Algerian legislation deals with electronic payment under the Electronic Commerce Act No. 18-05<sup>6</sup> and defines electronic means of payment as: "Any means of payment authorized in accordance with the applicable

<sup>1</sup>-Khaled Hassan Ahmed Lutfi, electronic litigation as an information judicial system: between theory and practice, Dar al-Thakr University, Alexandria, Egypt, p. I 2020, p. 13.

<sup>2</sup> -Al-Karawi Nassif, op. cit., p. 285.

<sup>3</sup> -Khaled Hassan Ahmed Lutfi, op. cit., p. 15.

<sup>4</sup>-Act No. 75-58 of 26-09-1975, amended by Act No. 05-10 of 20 June 2005, and Act No. 07-05 of 13 May 2007, containing the Civil Code.

<sup>5</sup>-The Electronic Signature Law No. 15-04 of 01 April 2015 establishing the general rules on electronic signature and certification, c. R.I. c. Issue 6, dated 10 April 2015, pp. 6.

<sup>6</sup> -Act No. 18-05 of 10 May 2018 on electronic commerce, No. 28 of 16 May 2018.

legislation enables the owner to make payment at close or distance via an electronic system."

## **Second section : Distinguishing remote litigation from some similar systems**

The tele-litigation system is distinct according to the concept we have seen in advance from other similar systems such as electronic court (First), electronic arbitration (Second), visual teleconference technique (Third).

### **First: The Electronic Court**

The Electronic Court is defined as: "A court that performs all legally mandated acts using the Internet, which contains programmes for the application of litigation procedures to shorten time, effort and sentence in the fastest manner without the personal presence of the litigants, lawyers and judges of the Court"<sup>1</sup>.

The electronic court is the most important means of applying the electronic litigation system and is considered an information technical space that reflects the spatial appearance of courts and judicial boards in which judicial hearings are held through various electronic media<sup>2</sup>.

The Court is one of the pillars of remote litigation by adjudicating cases without the parties physical presence.

### **Second : Electronic arbitration**

Electronic arbitration is defined as: "A special dispute settlement system in which the parties choose their judiciary and entrust it under a written agreement with the task of settling disputes that may arise or have already arisen between them in respect of their contractual or non-contractual relationship and which may be settled by arbitration<sup>3</sup>.

It also defines electronic arbitration as: "A type of arbitration conducted via the web through universal audio-visual means open to telecommunication, without the need for conflicts and arbitrators to meet in a particular real place. This type of litigation has emerged as a solution to certain e-commerce problems"<sup>4</sup>. For example,

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<sup>1</sup>-Al-Karawi Nassif Jassim Mohammed Abbas, Tele-litigation, Comparative Study, Halabi Rights Publications, Syria, i 1, p. I 2017, p. 126.

<sup>2</sup>-Haiti Fatima, Harwel Nabila Hiba, Electronic Litigation System Between Improving the Quality of Judicial Work and the Challenges of Digital Justice, Journal of Comparative Legal Studies, 2021, vol. 7, No. 1, p. 146.

<sup>3</sup> -Khaled Hassan Ahmed Lutfi, op. cit., p. 64 .

<sup>4</sup> -Iman bint Mohammed ben Abdullah Al-Qathami, Remote Litigation, Applied Jurisprudence Study on the Saudi System, Journal of Shari 'a Sciences and Islamic Studies, No. 84, March 2021, p. 981.

the London Court of International Arbitration and the Electronic Court of the World Intellectual Property Organization (WIPO).

Both electronic litigation and electronic arbitration agree that each of them serves as a means of adjudicating disputes. However, the fundamental differences between them are that electronic litigation is for all and the will of the adversaries does not have a role in it and is conducted in an open manner. Arbitration is not for all and is based on the principle of the authority of will, i.e. under the parties' agreement and is conducted in a confidential manner.

### **Third : Remote Visual Chat Technology**

Remote visual conversation is one of the most important techniques used in criminal justice by transferring all trial proceedings and their effectiveness between two or more places In order to enable the Tribunal to follow up on the accused's reactions and testimony when making statements and to enable the accused to familiarize himself with all the trial proceedings taken against him and to enable him to defend himself, hear witness testimony and respond to charges against him by the indictment authority, What characterizes this technique is that it includes a metaphorical presumption of parties attending the courtroom where the trial takes place, using headphones to listen to their voice and see their images with screens while they are away with their bodies<sup>1</sup>.

This technique is also defined as a means of audio-visual communication for meeting two or more people in different locations, both within one State and between several States, who can participate in a meeting with a positive and effective discussion that enables all parties to see, hear and talk to others simultaneously<sup>2</sup>.

Through this definition, it seems obvious that telemedicine is only one of the means used in the tele-litigation system, particularly in criminal justice, to facilitate trial proceedings without the accused's physical presence.

<sup>1</sup>-Rami Metwally Al-Kadhi, Investigation and Remote Trial Proceedings, Sharjah University of Legal Sciences Journal, vol. 19, No. 2, Joan 2022, p. 265,

<sup>2</sup> -Rami Metwally Al-Qadhi, *ibid.*, p. 368

## second requirement :requirements and obstacles to remote litigation

Life has imposed on public utilities in general and the justice facility in particular the development of mechanisms consistent with technological development to meet citizens' needs and facilitate their fullest, best and fastest presentation in accordance with the current requirements of the world (section 1), despite the obstacles they may face (second 2), as described below.

### First section: Requirements for remote litigation

To act in remote litigation, the foundations and foundations that constitute solid pillars for the proper functioning of the judiciary and for the achievement of both legal and judicial legitimacy can be limited to both legislative and substantive components. These may be restricted to both legislative (**First**), substantive (**Second**) and human components (**Third**).

### First : Legislative requirements

Recent legislation seeks to keep abreast of developments in the field of technology The new judicial system requires a legislative structure to legitimize the judicial process of electronic litigation, whether in the civil or criminal sphere, in order to ensure the protection of the rights deriving therefrom, which requires the enactment of new legislation appropriate to this system or the development and adaptation of existing legislation to keep pace with these developments; The information system may also be subjected to abuse, forgery, hacking and manipulation, necessitating legislation criminalizing all forms of abuse.

The Algerian legislature had followed these technological developments and had begun to recognize electronic writing under the text of article 323 bis of the Civil Code, as well as electronic signature under the 05\_04 Law on Electronic Ratification and Signature.

Algerian legislation regulates the issue of electronic litigation under the digitization of the justice sector through the 15- 03<sup>1</sup> Law on the Modernization of Justice, which addresses several issues relating to the development of a centralized information system for the Ministry of Justice and the certification of the authenticity of electronic documents.

Through the text of article 1 of the Act, it is subject to electronic litigation, and the 14\_15\_16 articles provide for the use of remote visual conversation during judicial proceedings.

<sup>1</sup>-Modernization of Justice Law No. 15/03 of 10/02/2015 of the Official Gazette No. 06 of 10/02/2015.



In addition, the legislature provided for electronic litigation under the Code of Criminal Procedure, as amended by Ordinance No. 20-04<sup>1</sup>, and strictly in article 65 bis 27: "The adjudicator may automatically or at the request of the parties hear the witness concealed by means of technical means that allow for the confidentiality of his or her identity, including by teleconference and the use of methods that do not allow the image and voice of the person to be known."

The Public Prosecutor's Office has also been created to receive complaints and petitions remotely on the websites of the Ministry of Justice and entered into service on 28 July 2020. It is noted that remote litigation of civil material is not effectively reflected in the fact that it requires the operationalization of the Ministry of Justice's sectoral network, which contains an information base that connects different judicial bodies in order to enable lawyers to register cases.

## **Second : Technical requirements**

In addition to the legislative basis, the application of the tele-litigation system requires a technical basis. The infrastructure of organs and instruments, as well as the protection systems of this electronic system, must be established through:

1/The Internet : a continuum of computer networks, including computers linked around the world, through which data are exchanged among themselves, including services provided by the Web, communication and e-mail techniques, and file transfer protocols<sup>2</sup>.

2/ Electronic court: The electronic court is one of the pillars of the application of the tele-litigation system by the existence of a court through which proceedings are heard and adjudicated using electronic means and without the physical presence of the parties to the proceedings.

It also provides the Tribunal with a range of computer equipment, accessories and software for computers, supports it on the Internet and connects the Tribunal's sections and halls in a way that enables its personnel to communicate and exchange documents and documents.

The Tribunal is also equipped with cameras and a display screen to enable follow-up of the Tribunal's various courtroom-level proceedings.

3/ Create an electronic record: containing a database of each claim and defined as: "a database on the intranet of each court through which the case data is recorded or

<sup>1</sup> -Order 20-04 of 20-08-2020 amending and supplementing Order 66-155 containing the Code of Criminal Procedure, No. 51 of 31-08-2020

<sup>2</sup> -Khaled Hassan Ahmed Lutfi, op. cit., p.

given a serial information number so that the electronic case file, a software containing two types of technical preservation, can be extracted from this record.<sup>1</sup>

The first type of preservation relates to the preservation of documents, documents and others in the form of PDF to prevent the change of their content, and the second is for the direct codification of records on trial proceedings.

4/A court website must be set up within the Ministry of Justice's portal : cases can be inquired, registered and fees paid.

5/Technical protection: This electronic system, through which private data and documents are traded and which require safeguards to protect such information, must be technically protected by converting written words into digitized numbers and digital images whose content is difficult to identify and preventing the leakage of electronically stored data<sup>2</sup>.

### **Third :Human requirements**

The application of the tele-litigation system must include human elements:  
1/ Qualified judges to deal electronically: the judge must keep pace with technological advances and acquire computer and telecommunication skills to enable judicial proceedings to be initiated and recorded in the electronic case file.

2/ Seizure Letter: Those who record and submit cases, attach them to evidence and documents, schedule cases, receive judicial fees, contact the parties, inform them to attend and follow up the proceedings. This requires that they have the skill to deal with electronic media.

3/ E-litigation also requires technicians specializing in programming, website management, Internet maintenance and the task of following up on trial proceedings, addressing any technical malfunction or malfunction occurring during the course of hearings and preventing hacking attempts and hacking of websites.

Let us not forget the role of counsel for the case in an electronic manner and the necessary availability of electronic communication devices.

### **Second section: Obstacles to remote litigation**

Remote litigation offers a lot of advantages as it can avoid problems after distance and its cost time, effort and expenses and the resulting failure to attend hearings, postpone cases and crowding out court litigants and electronic documents are more credible than paper documents that are easier to destroy or lose, The use of

<sup>1</sup> -Khaled Hassan Ahmed Lutfi, *ibid.*, p. 69.

<sup>2</sup> -Ashraf Jouda Mohammed Mahmoud, *Electronic Courts of Information and Electronic Litigation*, Modern Arab Office, Alexandria, 2014, p. 89.

electronic documents in remote litigation is transparent because information is available to all litigants. It also contributes to equality and avoidance of favouritism, thereby reducing manifestations of corruption.

However, despite all these advantages, there are many obstacles to the optimal application of remote litigation. In legislative terms, the legal provisions governing remote litigation and the protection of private data are inadequate, requiring adaptation of legal (procedural) texts to electronic litigation mechanisms.

Fluctuations and interruptions in Internet services adversely affect the tele-litigation system by impeding and disrupting judicial work. High cost of Internet use resulting in unequal use of the Internet due to litigants' financial capacity and is not available in some remote areas.

In addition, the remotely visible trial in the penal article may prejudice the principles of a fair trial<sup>1</sup> and is what we will present in the second Part of this study.

### **The second topic :**

#### **Violation of litigant's guarantees in remote litigation**

The judiciary is regarded as the legal protector of fundamental rights and freedoms, as a public facility providing services to the citizen as a natural or moral person in terms of service. This is why it has recently been known as a major reform and development in the name of modernization of the justice sector through the adoption of a modern legal system that ensures better functioning of the judicial organs on the one hand and facilitates services to the citizen and his proximity to the judicial facility through the use of visual conversations based on the 15/03 law on the juvenile justice. COVID-19, which has been witnessed throughout the world and has affected all mankind, has made remote prosecution an imperative phenomenon necessary for the continuity of tasks, especially judicial ones.

In contrast, remote trial had deficiencies in the performance of judicial work and the impact on the litigant's rights, which adversely affected the principles of a fair trial in both procedural formalities (Subtitle A) and substantive (Subtitle B), as will be shown below.

#### **First requirement: breach of the litigant's procedural guarantees**

A fair trial is based on a number of procedural standards that provide a person with legal protection and judicial coverage. and even more, universal and regional

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<sup>1</sup> -Ben Erd Abdul Ghani, Boudiaf Hajar, Electronic Litigation in Light of the Latest Adjustments between Aspirations and Challenges, Journal of Studies and Legal Research, vol. 6 No. 2, 2021, p. 19.

texts and even legislation have enshrined for most States a necessary human right from the standpoint of jurisprudence, law and the judiciary of the litigant, whether the victim or the accused, in particular procedurally, and the consequent infringement of the rights of the litigant and the violation of fair trial guarantees principle", which is embodied in both the principle of attendance, as well as the principle of orality

### **First section: The principle of attendance :**

Article 212/2 of the Code of Criminal Procedure stipulates that: "... the judge may base his decision only on the evidence presented in the course of the proceedings in which the debate took place in his presence." The final investigation procedure must therefore be present for all parties to the proceedings so that the judge can base his beliefs on a correct decision by discussing the evidence before him and a dialogue between the adversaries. The accused can defend himself authentically or proxy and face all the charges against him because the rule requires that no one is convicted until his statement is heard and his defence is presented<sup>1</sup>. The parties should be informed of the presence of the hearing in advance so that everyone can attend, especially the accused. If he is excluded from certain investigative proceedings, he is null and void, given his presence in public order<sup>2</sup>. This principle reflects several guarantees, the most important of which are:

1/Access to the file : Article 1 of the aforementioned Act No. 15/03 stipulates that all documents and judicial decisions shall be sent electronically for the purpose of informing the litigant of the file against him.

2/Interrogation and hearing of the parties : Article 14 of Law 15/03 states: "If after the distance is called or requires the proper administration of justice, the parties can be interrogated and heard through remote visual conversation." and article 15 indicates the possibility of using a remote visual chat technique by stating that "The investigating judge may use remote visual conversation to interrogate or hear a person and to conduct confrontations between several persons. Panel of Commissioners", the referee could also use remote visual conversation to hear witnesses, civil parties and experts, The judgement dealing with misdemeanour cases may resort to the same mechanism to receive statements by a detained accused if the person concerned and the Public Prosecutor' and article 16 specifies the place of the electronic litigation procedure as follows: "Interrogation, hearing or confrontation shall be carried out using the mechanism of remote visual conversation at the seat of

<sup>1</sup> -Hatem Bakar, Protection of the Accused's Right to a Fair Trial, Critical Analysis in the Light of Criminal Legislation (Egyptian, Libyan, French, English, American, Islamic Law) Al-Ma'raq, Alexandria, Egypt, I 1997, p. 161.

<sup>2</sup> -Ahmed Shawqi al-Shalqani, Principles of Criminal Procedure in Algerian Legislation, Part II, University Publications Office, Algeria, p. 5, p. 10, p. 385.

the Court, which is close to the place of residence of the person whose statements are requested. In the presence of the competent regional public prosecutor and the controller, the public prosecutor shall verify the identity of the person who is being heard and, if the person is in custody, issue a report."

Article 65 bis 27 of the Code of Criminal Procedure, as amended and supplemented by Ordinance No. 15/02, further stipulates that : "The judgement may automatically or at the request of the parties, hear the witness concealed by means of technical means that permit the confidentiality of his identity, including by teleconference and the use of methods that do not allow the person to know and vote".

3/Confidentiality of investigation procedures : Tele-litigation technique entered the investigation phase and hearing witnesses and experts under Order 20/04 amending and supplementing the Code of Criminal Procedure in articles 441 bis and 441 bis 02, 441 bis 06, 441 bis 07 and 441 bis 10 as a result of the rising Covid-19 pandemic, which allowed the court to use telemedicine technology on its own, litigation or prosecution during interrogatorial examination, However, article 441 bis 8 provides for the right to intercept and exclude the visual conversation technique of the Public Prosecutor's Office or an adversary, provided that it is based on serious objections and if it is not serious to justify refusal to comply with that technique, the judgement shall issue a decision that is not subject to appeal. Article 441 bis 9 recognizes the right of parties to use this technique and the judiciary to refuse or accept after consultation with all parties. The opinion of the Public Prosecutor's Office may be reviewed if new circumstances arise after the submission of the application. The provisions of article 347/2 of the same law apply if the accused refuses to answer or decides to fail to appear<sup>1</sup>.

4/Sentencing : The presence of the litigant in person during the hearing and in the sentencing board is of great importance. The presence of the parties plays a prominent role in forming the judge's conviction through the feedback noted by the parties during the hearing, which is held publicly in rooms open to the public. Article 162 of the Constitution 2020 "In remote litigation, the litigant cannot sign his statement in the record of the hearing because he is not physically present. The judgement in remote litigation does not fulfil the principle of openness.<sup>2</sup>

**C: Oral principle**

<sup>1</sup> -Abdelhamid Amara, Use of Remote Visual Conversation Technique in Investigation and Criminal Trial, Studies and Research of the Arab Journal in Humanities and Social Sciences, Zian Ashour University, Al-Jalafa, Algeria, vol. 10, No. 3, Tenth Year, 2018, p. 69.

<sup>2</sup> -The coronavirus pandemic has caused the absence of the principle of openness in proceedings and the pronouncement of court decisions due to quarantine.

The general principle in the trial is that during the exchange of dialogue between the adversaries through an audible and clear speech, the oral template must be established until confrontation is achieved. The judge must balance the adversaries' statements in order to build his self-conviction and form his judgement, since the evidence, investigation and bonds are insufficient but must be presented on the stage of the hearing from dialogue, discussion and argument.

Thus, the principle of oral remotely litigation using visual conversation does not achieve the desirability<sup>1</sup> in terms of the quality of direct discussion and even participation in the exchange of dialogue between members of judicial litigation, whether judges the parties to the conflict, witnesses, lawyers, and even the presence of the public<sup>2</sup> exercising some kind of oversight of the trial process, which supports confidence in justice, leads judges to the proper application of the judgement, takes into account both the accused, his counsel and the Public Prosecutor's Office, as well as witnesses' statements, and there is moderation and balance in applications and defences, which instill confidence in the psyche of the litigator and society. In addition to the right of the press and the audiovisual media to attend oral hearings and what takes place in the courtroom because it also simplifies its censorship through media coverage on the one hand and supports deterrence in society on the other, One of the main disadvantages of the principle of orality, which would violate the litigant's guarantees, is that:

1/Artistical and technical barriers: ICT is essential in all aspects of life because it is a cultural shift characterized by several positive<sup>3</sup>, but the principle of oral pleading approach ", which is difficult to apply in tele-litigation because of technical difficulties such as lack of clarity of image and voice and the inability to achieve effective confrontation between the parties to the conflict. There may also be a certain category that is unskilled and does not possess the skills and competencies required for the use of tele-chat technology in addition to disruption, slow communication and lack of visual dialogue.

2/ Psychological distancing: The litigant may develop a sense of psychological distancing which makes him uncomfortable with expressing what he has in mind, which creates a fluctuation in interaction and difficulty expressing his feelings, and

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<sup>1</sup> -Abdul Hamid Omar, Fair Trial Guarantees in Light of Telecommunication Technology in Criminal Proceedings in the UAE, Comparative Study, Kuwait Law Journal, Year 6, No. 4, 2018, p. 401.

<sup>2</sup>-- Hearings shall be held in public except in cases involving minors, public order and public morals, the hearings of which shall be confidential. In any event, sentencing shall be public.

<sup>3</sup>- Youssef Amir Faraj, Electronic Courts and Litigation, Modern Arab Office, Cairo, Egypt, p. 2014, p. 41.

thus the principle of oral disadvantage because it does not achieve the principle of orientation as applied in the ordinary litigation system.

## **Section 2 : breach of the litigant's substantive guarantees**

Most constitutions, laws and even international instruments have guaranteed legal and judicial safeguards to litigants relating primarily to human rights, the most important being the right to a fair trial, which is based on several principles, the most important of which is the principle of equality (**Chapter 1**), as well as the principle of guaranteeing the rights of the defence (**Chapter 2**).

### **Chapter 1 : Principle of equality**

The principle of equality is one of the fundamental principles underlying the various regulations and laws intended to place all individuals in one category of rights and duties, i.e., they are equal in the eyes of the law. legal equality and judicial equality, The former means a single transaction for similar centres because the transactions vary differently, so they are called relative equity. The Egyptian Supreme Constitutional Court's decision of 19/05/1990 stipulated that: "The principle of equality before the law is at the forefront of public freedoms and rights in the Constitution, since it is the basis of justice, freedom and social peace and its purpose is to safeguard the rights and freedoms of citizens in the face of forms of discrimination which affect or restrict the exercise of such rights.<sup>1</sup>"

Judicial equality is defined by the jurisprudence of the proceedings as the right of access to justice without distinction between litigants without restriction or restriction and exclusion of all considerations of discrimination<sup>2</sup>. Thus, judicial equality requires sentencing and the application of penalties on the basis of general and abstract rules and everyone who meets the necessary conditions and specifications.

Based on the foregoing, remote litigation can be said to violate the principle of equality, especially in terms of attendance. "Some are present, including the judge and the Public Prosecutor's Office, who have every opportunity to present their arguments and pleadings directly without any technical or technical impediment, as opposed to the presence of the litigant, who is regarded as a formal presence only. He may not be able to make all his statements and arguments and assumes some technical problems that would hinder the conversation, such as a disconnect of the voice and a lack of clarity of the picture.

<sup>1</sup> -Mohamed Ahmed Hamid al-Badri, Constitutional Guarantees of the Accused at the Criminal Trial Stage, Arab Renaissance House, Egypt, p. I, 2002, p. 31.

<sup>2</sup> -Amal Al-Fazairi, Litigation Guarantees, Al-Ma 'raf, Egypt, 2000, p. 35.

## Chapter 2 : Defence rights

Defence rights are fundamental guarantees of justice because they are based on the notion of equality of opportunity and balance between the power of prosecution and the accused, who is considered to be in vulnerable position. right <sup>1</sup>, which is guaranteed constitutionally and universally because it is one of the rights aimed at achieving a dual interest. The first is in the interest of the individual so that he or she can prevent charges against himself and the second is in the interest of society by knowing the truth by condemning those found guilty and by demonstrating the right of those found innocent<sup>2</sup>.

He defines the right of defence as enabling the accused to fend off the charge of himself through a range of activities initiated by the authenticity of either himself or on behalf of a lawyer, a privilege with which he is immune<sup>3</sup>.

Despite all the importance accorded to the rights of the defence, Algerian legislator did not grant her the right to be tried remotely on the basis of the modernization of justice law or the amendment of the Code of Criminal Procedure. (Order 20/04 and Law 15/03) by granting the lawyer freedom to be present with the accused at the place of the conversation or in the hearing room. The accused was also executed free to communicate with his lawyer by telephone or other virtual means, which is lacking the right of defence as a guarantee to the accused In addition, it eliminated the requirement of the parties' consent to the choice of counsel in the event that counsel could not be assigned by the accused but was imposed on him by the counsel chosen by the court<sup>4</sup>.

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<sup>1</sup> -Abdallah Hilali, Pre-Trial Defence Rights between Ideal and Realistic Style, Arab Renaissance House, Egypt, p. I 2000, p. 05.

<sup>2</sup> -Mohammed Khamis, Violation of the Accused's Right to Defence, Al-Ma 'raq Facility, Egypt, 2000, p. 07. Abdel Hadi Yousfi, the remote visual trial, devoting to the modernization of justice or prejudice to guarantees ?Eliza Journal of Research and Studies, Resilient University Center Sheikh Amod Ben Mukhtar, Elize, Algeria, vol. 6, No. 01, 2021, p. 226.

<sup>3</sup> -Ali Aziz Sardar, Accused's Assurances During Interrogation, Al Qadmi Center for Legal Issuances, Egypt, i 1, p. I, 2014, p. 92.

<sup>4</sup> -Amara Fawzi, examining magistrate, doctoral thesis, Faculty of Law, University of the Brothers of Montori, Constantina 2, Algeria, 2009-2010, p. 115 ff.



## Conclusion :

Remote litigation has become one of the symbolic advantages of technological advancement by telecommunications and audiovisual information so that mobility is unnecessary for all members of the adversary because it is achieved at the lowest cost and effort and is more beneficial than it has encouraged its strong adoption by most State courts provided that the principles and guarantees of the trial are not compromised because they adversely affect the litigant and his personal and private interests.

Through this paper we have reached a series of findings:

- Remote litigation is an important step in the history of the judiciary through the modernization of justice according to technological development.
- The adoption of this type of litigation has led members of the judiciary to be trained in the field of digitization and good administration of justice and the guarantee of litigants' rights.
- Remote litigation has become of great importance because it has received a remarkable recovery in the context of the global coronavirus pandemic, making it imperative to safeguard the health and safety of all citizens, especially members of the litigation.
- Despite its many advantages, tele-litigation has many obstacles in its application and is prejudicial to the principles of fair trial.

This leads us to propose recommendations such as:

- Organize and intensify formative courses of human competencies so that they have the ability to control remote litigation.
- Remote litigation is mandated to provide the necessary and necessary technological means for the success of the visual conversation technique and in return to ensure respect for the rights of the litigant according to the procedural and objective legal system in order to impose a tight judicial system that oversees the effectiveness and effectiveness of remote litigation.
- To work seriously and effectively to achieve a balanced equation between the guarantees of a fair trial for the litigant and the preservation of its principles in relation to the facility of justice in order to enhance the credibility of the judiciary and enhance trust between him and the citizen.
- The need to increase the flow of the Internet across the country, especially in judicial and penal institutions, because it is a remote litigation column.

-There is a lack of reliance on remote litigation in all trials because some of them impose the nature of the trial in which litigants are present, especially in criminal cases.

-The visual conversation technique should be used to be instrumental in combating transnational crime through international cooperation because it is easily communicated between States in record time.

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