

DIGITISATION OF THE JUSTICE SECTOR IN ALGERIA: REALITY AND CHALLENGES

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Abstract

Algeria has made significant progress in the field of digital transformation in the public service sectors, particularly that of justice, considered one of the sensitive sectors due to its link with individual freedoms.

Despite the great progress made in digitalization in this sector, their use by citizens remains limited due to the lack of digital culture among a large part of society, and the lack of knowledge of its advantages and guarantees, in addition to other economic and cognitive factors that must also be taken into account in the implementation of the National Digital Transformation Strategy 2024-2029.

Keywords: *E-justice -E-Judiciary - Legal Guarantees - E-Services.*

INTRODUCTION

The digitisation of judicial services, or the justice sector in general, falls within the framework of the comprehensive programme for the reform and development of the judicial system, which Algeria has been engaged in since 1999. This has entailed the establishment of a number of key institutions and initiatives, including A committee was established to conduct a comprehensive assessment of the status of the sector, namely the National Committee for Justice Reform. This committee was tasked with evaluating the sector and formulating recommendations for its development in alignment with international standards and Algeria's international commitments in this field. One of the responsibilities assigned to this committee by Presidential Decree No. 99-234, which established it, is to propose mechanisms to facilitate access to justice for citizens. Article 5 of the decree stipulates that the committee should "propose all useful measures and recommendations to bring justice closer to citizens, make legal tools and means of action more effective, and make the conditions and methods of operation of judicial bodies and prison institutions less burdensome."

Indeed, among the recommendations and proposals set forth by the Commission in its report was the necessity to facilitate access to justice and improve the performance of the justice system through the modernisation of the sector. The recommendations constituted the blueprint for the subsequent implementation of measures and procedures to digitise the judiciary in organisational and service areas, including the administrative part. This was to be achieved through the development of legislative texts that would provide legal and constitutional guarantees to safeguard the rights, freedoms and data of judicial sector clients. This raises the following issue:

What electronic judicial mechanisms are in place to protect the legal and constitutional guarantees for those who interact with the judicial sector, and the limits of their application in practice?

In order to respond to this question, we have elected to adopt a descriptive and analytical approach, dividing the topic into three sections as follows:

- Section I: An examination of the legal basis for the legitimacy of e-judiciary.
- Section II: Evolution of the legislative and regulatory framework for e-justice.
- Section III: E-services for the justice sector

Section I: The Legality of E-Judiciary: Legal Basis

The legal basis for the legitimacy of e-judiciary is not distinct from the overarching concept of the legitimacy of administrative work in general. This can be succinctly summarised in two key concepts:

The first concept is the expanded concept, which means that all rulers, ruled and public bodies are subject to the provisions of the law, especially the constitution, or what is known as the rule of law. This is exemplified by the saying that the law is superior and not superior to it, and the principle of legality is also referred to by the term "state of law" - meaning "full submission to the law, whether on the part of individuals or the state."

The second concept, which concerns us, is that of the legality of administrative action. This means that all acts and behaviours of the administration must be within the framework of the law. This is to say that they must either be based on an explicit law or not contrary to an explicit law. This latter point is exemplified by administrative customs that have become embedded in the rule of law through their frequency. They would otherwise be invalidated. As a public authority representing the state and charged with achieving a public interest, the administration derives its powers to act and bind those subjects to it from the principle of legality. This principle provides the basis for the guarantees that those subject to it derive to protect their rights and freedoms in the face of state authorities.

The concept of administrative legitimacy is defined in a number of ways, all of which are related to the same underlying meaning. These definitions include the following: "all actions of the administration are within the limits of the law", "the acts and behavior of the executive authority (public administration) are subject to the legal system prevailing in the state in its various rules", and "the administration is subject to the law in carrying out its governmental activities and exercising its administrative actions, whether legal or material, and working within its circle and general framework, and that the administration adheres in all its actions to all binding legal rules."

In alignment with the overarching principle of administrative work legitimacy, and in consideration of select definitions of e-government, such as the World Bank definition, which characterizes it as "the process of government institutions utilizing information technology, including broadband networks, the Internet, and mobile phone communication methods, with the potential to alter and transform relations with citizens, business entities, and various government institutions..." The United Nations defines e-government as "the use of the Internet and the global broadband network to provide government information and services to citizens." Digital justice, as defined by many legal scholars, is "particularly the use of information and communication technologies to achieve informed access to the justice facility and facilitate communication between different actors (lawyers, judges, notaries)". It is evident that the legislation pertaining to the modernisation of justice has introduced a novel formula for the conceptualization of the legitimacy of administrative work. This is because the services provided by the judicial sector, irrespective of their nature, are founded upon the tenets enshrined in earlier legislation that confer upon it a certain degree of legitimacy.

Before addressing the types of e-services provided by the judiciary sector in parallel with traditional services, we will first address the evolution of the legislative and regulatory framework for e-judiciary.

Section II: Evolution of the legislative and regulatory framework for e-justice

The period between 2002 and 2015 was characterised by the preparation of the infrastructure for the digital take-off of the justice sector, in accordance with the recommendations of the National Commission for the Reform of Justice in this regard. The initial step was the establishment of the Directorate General for Modernisation, Organisation and Methods at the central administrative level of the Ministry of Justice. In accordance with Article 5 of Executive Decree No. 02-410 on the organisation of the central administration of the Ministry of Justice, this entity was tasked with "modernising the judicial system in terms of its organisation, its internal functioning and its relations with the national and international environment." The General Directorate of Modernisation discharges its responsibilities through two directorates. The directorate of studies,

organisation and curricula is responsible for conducting studies pertaining to judicial organisation and developing operational procedures through its two sub-directorates, namely the Sub-Directorate of Studies and Audit and the Sub-Directorate of Organisation and Curricula. The Directorate of Automated Information and Information and Communication Technologies is responsible for the technical aspect of modernising the organisation of the justice sector. This is achieved through the introduction and dissemination of automated media and the development of a network to exchange information between the various structures of the judicial system according to international standards. This is carried out through three sub-directorates: The Sub-Directorate of Automated Information Systems, the Sub-Directorate of Automated Information Applications and the Sub-Directorate of Information and Communication Technologies, the latter of which is responsible for coordinating with the previous two sub-directorates and implementing the digital transition by establishing an Internet connection and modernising the telephone network to meet contemporary technical requirements.

In addition to the aforementioned measures, the Committee for the Revitalisation and Follow-up of Justice Reform was established. This committee was tasked with conducting comprehensive studies on the existing situation, utilising the expertise of national and international experts specialised in this field. Furthermore, the committee was responsible for translating the recommendations and proposals of the National Committee for Justice Reform into practical measures, assessing the feasibility and methods of implementing and following up on these recommendations. In accordance with Article 2 of Executive Decree No. 02-411, the Committee is responsible for preparing the measures that constitute the justice reform, monitoring their implementation, and evaluating the work carried out. In this context, the committee is tasked with several key responsibilities, including mobilising the necessary expertise to prepare studies and develop technical measures for the reform, and, in general, carrying out any work necessary to conceptualise and prepare executive measures for the reform of justice. In order to facilitate the preparation of the reform plan by the aforementioned committee, the state has made available all human resources, national and foreign expertise when required, as well as material and financial resources, with the aim of enabling the committee to fulfil its tasks in the most effective manner possible.

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One of the practical applications of the results of this committee's work was the issuance of Executive Decree No. 04-333, which included the restructuring of the central administration of the Ministry of Justice and the creation of the General Directorate for the Modernisation of Justice. This new body was tasked with carrying out the same functions as its predecessor, the General Directorate for Modernisation, Organisation and Methods (established under Executive Decree No. Executive Decree No. 02-410, namely, the modernisation of the judicial system in terms of its

organisation, internal functioning and relations with the national and international environment, with more detailed tasks. However, the General Directorate for the Modernisation of Justice is structurally similar to its predecessor.

The implementation of the Modernisation of Justice Programme commenced in 2015 with the enactment of the Modernisation of Justice Law No. 15-03. The primary objective of this legislation, as set forth in its first article, is to "modernise the functioning of the justice sector". The aforementioned legislation delineated the material assistance and digital services to be furnished by the justice sector to citizens and other clients. These included the establishment of a centralized information system for the Ministry of Justice, the electronic transmission of judicial documents and transcripts, and the utilization of video conferencing technology in judicial proceedings. This legislation was further augmented by the enactment of Law No. 15-04, which delineates the regulations pertaining to the utilisation of electronic signatures and certifications, along with the prerequisites for their efficacy, with a view to facilitating the transition to an electronic format for administrative documents and correspondence.

Section III: E-services for the justice sector

The e-services provided by the judicial sector to its clients, both public and private, can be divided into three categories: Information services, administrative services and e-litigation services, which are summarised below:

1. Electronic Media and Information Services

The information and e-information services are the services included in the Ministry of Justice's website and its digital platforms. The information service consists of informing the general public about the justice sector in terms of its organisation and the tasks it performs at the level of the central administration and its various affiliated bodies, in particular those of interest to litigants in connection with the various judicial bodies, their degrees and jurisdictions, the penal institutions and their external rehabilitation centres. The information services also include publicizing the activities of the sector, including training activities, through the announcements and publications service on the website, and providing the public and professionals with legal and procedural information and updated legislative texts through the "Algerian Law Portal" service.

As regards electronic information services, they include the possibility for litigants and lawyers to check the status of cases (the so-called Automated Judicial File Management and Follow-up System), to submit questions and suggestions via e-mail and the call centre at the central administration of the Ministry of Justice (1078), and to submit complaints and follow their status via the e-Prosecution platform.

2. Electronic administrative services:

The administrative nature of these services is that they are no different from the e-services related to the collection of civil status documents and other personal documents, biometric and otherwise, which can be obtained through the official website of the Ministry of the Interior, Local Authorities and Urban Development. For the justice sector, they consist in the possibility of obtaining some personal documents, such as the criminal record and, in particular, the certificate of nationality, as well as applications for the correction of civil status errors, for citizens, or the withdrawal of court decisions and the authorisation to contact prisoners remotely, for lawyers.

The fundamental difference between administrative services and information and communication services lies in the fact that the latter do not use the personal data of service users and do not impose any obligation on the central administration of the Ministry of Justice with regard to the digital content it decides to make available to the public on its website, since the central administration of the Ministry of Justice has the power to decide and assess the nature and timing of the information and news it makes available to the public, as well as the content and limits of the replies it gives to citizens' requests, or in other words, these services do not create any obligation towards individuals that could give rise to legal liability on the part of the central administration of the Ministry of Justice. On the other hand, the administrative services rely on the personal data of the person requesting the service and the original data of the requested document in its paper form, and the administration is responsible for ensuring the security and reliability of

these data, in accordance with the principle of legitimacy, which requires the right of its clients to secure electronic services that preserve the privacy of their personal data and protect them from any form of manipulation or falsification.

In order to enshrine this principle, the legislator has made the administrative authorities responsible for the protection of such data. Law 15-03 on the modernisation of the judiciary stipulates that the Ministry of Justice guarantees the certification of the electronic signature and the information contained in the electronic document and is legally responsible to the persons whose signatures it certifies and to third parties for the certificates it issues. In addition to the aforementioned preventive measures, the legislator has also provided for punitive measures against third parties in the event that these data are compromised, by establishing criminal penalties for their violation in Laws 15-03 and 15-04 on electronic signatures and certification and the conditions for their validity which are included in the Penal Code. This reinforces the previous preventive measures established in Law No. 09-04 establishing special rules for the prevention and combating of crimes related to information and communication technologies, which was supplemented in 2018 by Law No. 18-07 on the protection of personal digital data, as well as the establishment of a practical mechanism for its implementation, namely the National Authority for the Protection of Personal Data.

From the above, it can be seen that these legal texts grant legitimacy to the electronic version of administrative documents that enjoy original and authentic legitimacy in their paper, or traditional form, which is the reference for proving the authenticity and reliability of the electronic document as stipulated in Article 4 of Law 15-03, confirming that **"documents and judicial documents issued by the services of the Ministry of Justice, its affiliated institutions and judicial authorities may be signed with an electronic signature whose link to the original document is guaranteed by a reliable means of verification."**

- **The preceding analysis leads to the following conclusions:**

- (a) With reference to the legal texts that establish the electronic form of judicial services, it is evident that a qualitative shift is occurring, establishing new protection mechanisms for the legal and constitutional guarantees of judicial sector clients.
- (b) These technical mechanisms to guarantee the rights and freedoms of those dealing with the judicial sector, although they share their source with traditional mechanisms, i.e. legislation, are not a substitute for them. The reliability of these technical mechanisms depends on the extent to which they are identical to the original paper copy.
- (c) There is no legal provision that obliges applicants to choose only one of the two forms. Indeed, a person may issue a document in both original and digital formats simultaneously. This may be attributed to the absence of an electronic monitoring mechanism to track the issuance of digital documents by individuals, particularly given that one of the objectives of e-governance is to reduce, not increase, paperwork.

3. Electronic litigation service

Prior to an examination of the nature of the e-litigation service and its implications, it is first necessary to define this concept, which has recently become a part of the legal lexicon.

3.1 Definition of Electronic Litigation

E-litigation is a term whose emergence is linked to the spread of modern means of communication and their adoption as alternatives to the traditional means of carrying out various judicial procedures, from the investigation and hearing of witnesses to the pronouncement of a judgement, or to improve the traditional means of processing and preserving the data of the case file. However, from a terminological point of view, many definitions have been given, including that of Professor Sinan Sulaiman Al-Tayari Al-Dhuri, who believes that e-litigation is "the authority of a specialised group of regular judges to hear the case and conduct judicial proceedings by innovative electronic means, within an integrated information judicial system or systems, adopting the approach of Internet technology."

Some jurists have also defined e-litigation as the conduct of judicial proceedings using modern electronic means within an information judicial system or systems with integrated parties and means that rely on the methodology of international network (Internet) technology, international network (Internet) programs and electronic computer file programs in the consideration and adjudication of cases and the execution of judgments.

3.2 Electronic litigation procedures

According to Algerian law, the e-litigation service consists of investigations and trials in misdemeanour cases through remote video conferencing. Law 15-03 limits these procedures to hearing, questioning or confronting persons, other than the accused, by the investigating judge. It also consists of conducting the trial of defendants in custody in misdemeanour cases by remote video conferencing and hearing other parties, including witnesses, civil parties and experts. At the same time, the court clerk records all the statements made by the parties, the accused, witnesses and the verdict, just like a regular in-person trial, and the paper file is attached to the electronic recording of the hearing.

It is noteworthy that the legislator did not provide an explanation as to why the option of conducting trials remotely is limited to misdemeanour cases and not criminal cases. This may be attributed to the fact that the misdemeanour court is an evidence-based institution wherein the judge's determination of guilt is contingent upon the evidence presented rather than the accused's personal characteristics. In contrast, the personality of the accused plays an important role in the weighing and evaluation of the facts by the criminal judge, particularly in cases where there is a lack of evidence. This is based on the criminal judge's personal conviction, which is influenced by conscience, subjectivity and relativism, the assessment of these factors can be challenging when conducted remotely.

Unlike administrative services, the use of this technology in judicial proceedings does not depend on the judgement of the trial judge or the investigating judge, but rather on the fulfilment of the conditions stipulated in articles 14 and 15 of Law 15-03, although the legislator left the judgement on the fulfilment of these conditions to the investigating judge and the trial judge, such as the condition of distance or the necessities of the proper administration of justice, as the law does not specify the distance at which e-litigation can be used, nor does it define the meaning of the proper administration of justice. On the other hand, the legislature requires the express consent of both the accused and the public prosecution in order to preserve the fair trial guarantees for the accused, including his right to be present in person in accordance with Article 212, paragraph 2 of the Code of Criminal Procedure, which stipulates that "the judge may only base his judgement on the evidence presented in the proceedings and discussed in his presence." This is to enable the accused to confront his opponents and discuss their statements and evidence, because the investigation conducted by the judge at the hearing is the last opportunity for the accused to defend himself and refute the charges brought against him.

Remote trial technology was used extensively in Algeria during the COVID-19 crisis in 2019, avoiding the need to postpone the trials of detained defendants after the complete paralysis of various judicial authorities after the Ministry of Justice issued a number of ministerial notes ordering preventive measures to limit the spread of the pandemic, including the suspension of all trial sessions in courts and judicial councils in all subjects, including felonies and misdemeanours, with the exception of trials of detainees in misdemeanour cases, provided that the trial is conducted remotely with the consent of the detained defendant and the public prosecution.

CONCLUSION

Algeria has made great strides in modernising the justice sector in general and introducing modern electronic technologies in litigation procedures in particular, by adopting an arsenal of legislative and regulatory texts and investing in the training of human resources in modern digital technologies. Like other public sectors and international experiences in this field, the field application of the shift towards digital judicial services has established technical mechanisms to

guarantee the rights and freedoms of litigants in parallel with the traditional method, pending its generalisation as the only method after the completion of the comprehensive digital transformation project and the achievement of e-government in Algeria by 2030. However, establishing a culture of digital public services and popularising them among different segments of society may require more time than the time needed to establish the appropriate legal framework and control these technological alternatives, especially in the field of remote trial, which daily practice has shown reservations about it by the two main parties involved, the judge and the accused. The judges' reluctance can be attributed primarily to technical issues pertaining to the quality or interruption of communication.

On more than one occasion, this has resulted in the suspension of the trial, causing them to become distracted. With regard to the defendants, in addition to the technical obstacles, their reluctance is, in our view, attributable to the fact that an adversarial trial affords them greater opportunities and more time to respond to their opponents and persuade the judge, particularly when their lawyer is present in the courtroom.

SUGGESTIONS

Based on the above, we believe that in order to accelerate the transition to a digital judiciary, it is necessary to establish a culture of digital services among citizens and bring them closer to them at nominal prices as a first stage by taking a number of measures, including:

- 1- Providing electronic media free of charge to citizens within certain limits and generalising them, especially at the level of judicial authorities, commercial centres, public libraries and even recreational places frequented by citizens in order to consolidate and encourage the culture of e-administration .
- 2- Placing informational and educational screens on the ways of using these electronic media in the places where these media are placed, such as those in some administrations such as postal centres regarding the use of the thick card and other electronic services .
- 3- Legalising the use of electronic media in accessing administrative services in the justice sector as an alternative to the traditional paper form and not as a parallel means.
- 4- The experience of the coronavirus pandemic has shown the need to adopt exceptional measures regarding the use of electronic judiciary even without the consent of the detained defendant or the prosecution in case of necessity when the public interest requires it.
- 5- It might be appropriate to consider the use of videoconferencing without the accused's consent as a mitigating circumstance, in accordance with article 441 bis 8 of order 20-04 amending the code of criminal procedure.

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