

THE IMPACT OF DEVELOPING THE SMART LITIGATION SYSTEM IN CONSOLIDATING THE RIGHT OF DEFENSE FOR LITIGANTS IN COMPARATIVE ARAB LEGISLATION

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ABSTRACT

This research focuses on presenting the procedures of the smart litigation process in the special civil courts, as with the expansion of international relations and with the global openness to trade and economy and the encouragement of foreign investments in all countries, in addition to the spread of immigration and ease of movement and others, with the development of digital transactions and the multiplicity of artificial intelligence applications, and the diversity of transactions and contracts between members of all societies, wherever they are, many legislations have tended to adopt smart litigation or what is known as remote litigation, in the hope of solving many of the problems facing litigation procedures in its traditional stages directly before the courts, as this research came to stand on the reality of this type of litigation and to provide an explanation of the pros and cons of smart litigation processes and procedures, and the multiple effects that it has on the rights of litigants during litigation processes, starting from the stage of filing and announcing the lawsuit to the stage of final judgment and the stage of implementation.

Whereas the current research reviews the Arab legal legislation governing smart litigation based on the procedures followed and compared in terms of text and application.

The research used the comparative analytical method, to scientific analysis and scientific comparison between the Arab legislation governing smart litigation, through the analysis of procedural legal texts governing the stages of litigation. And study the case of some civil cases that were carried out through smart litigation in the special civil courts in some Arab countries.

To clarify the effects of this advanced type of litigation on the rights of litigants and on the stability of transactions and the consolidation of prompt justice in general and the consolidation of the right of defense. As well as to determine the ability of the legislator in the Arab countries to solve the problems resulting from litigation of all kinds. And its ability to address the shortcomings in the stages of the course and progress of the case to preserve the rights of litigants and the stability of transactions in society.

Keywords: *Smart Litigation, Remote Litigation, Right of Defense, Artificial Intelligence*

INTRODUCTION

The world has witnessed many developments in all areas of life, including the expansion of communication networks, technological development, in addition to artificial intelligence techniques and expert systems, which resulted in the trend of transforming the traditional lifestyle into a new lifestyle that relies on these means and tools, as traditional transactions began to be replaced by transactions. Electronic and moving to the stage of digital transformation gradually.

The judiciary was not far from this, as it was necessary to take serious steps to implement digital transformation processes in the judicial system, [15], leading to remote litigation (smart litigation). To keep pace with these developments and establish justice in society, the process of developing it is not an easy matter, as there are many challenges and obstacles that affect its effective application, in addition to the fear of its impact on human rights in litigation [1].

Whereas the right to litigation is one of the basic rights in international and regional charters and various legislations, and it entails enabling a person before the judiciary to access his rights and protect him in all stages of litigation procedures, and for this reason this scientific paper came to demonstrate the impact of developing smart litigation in establishing the right of defense for litigants in comparative legislation, What is its meaning, and what are its characteristics? What are the requirements for its application to achieve justice in society?

The concept of smart litigation

Some jurists tended to define it in terms of litigation procedures [14]. Or in terms of the desired goal or based on its meaning [12]. It is a modern information judicial system that relies on information technology means, modern technology, artificial intelligence applications, and expert systems in cyberspace to implement the usual litigation procedures, starting from registering the case initially to implementation, and it may be applied partially or completely [15].

Characteristics of smart litigation

Smart litigation is characterized by several advantages that distinguish it from traditional litigation, including:

- Moving from traditional paper dealing to electronic paperless dealing and relying on information technology means and artificial intelligence applications in litigation procedures, such as audio-

visual communication technology in court sessions, and electronic payment techniques, which allows proving electronic transactions and electronic documents through legal means of proof such as electronic certification and signature. Electronic [1].

- Save time and speed in exchanging documents, papers, and litigation procedures, without the need to move to the court building [4]. Reducing expenses and saving efforts for all parties [13]. The possibility of directing litigation procedures from registration to implementation in a secure manner that fulfils the pillars of information security [3]. Improving the quality of judicial and legal services by simplifying them, increasing their flexibility, and raising the efficiency of judges and administrators in judicial work [8]. Reducing the accumulation of cases in the courts, speeding up their processing and decision, and saving judicial time [2], [3].
- It contributes to increasing transparency and combating corruption by reducing human interference in litigation procedures and thus enhancing confidence in the judicial system. Facilitating transactions between the government and private sectors, in addition to unifying efforts between government departments using a unified electronic portal that provides all services. It also enhances social communication so that all judicial activities and various sessions are activated, and easily announced and legal awareness is spread in society [2].

Conditions for applying smart litigation.

Its use must adhere to certain conditions, to achieve justice and facilitate judicial assistance between countries, including:

- Providing human, material, and technological means and capabilities, and continuous qualification and training, in addition to providing the latest devices, technology and software to enhance security and provide technical protection for it, as well as securing a solid infrastructure for it, so that it helps the state implement it with high efficiency [2].
- Adapting the use of the smart litigation system to the country's law and legislation, considering the rules of international and regional jurisdiction, adhering to judicial and legal agreements to achieve the highest level of judicial assistance between countries, and developing legislation in the country in line with the requirements of technological development through amending applicable laws, or enacting special legislation and laws. It is compatible with the smart litigation system and its requirements to achieve justice [8].

Challenges facing smart litigation.

There are some difficulties facing its effective and efficient application, including:

- Fear of exposure to piracy and electronic intrusions, especially when there is a lack and weakness of technical capabilities, and a lack of expertise that is compatible with technical means that rely on precise algorithms that require high competencies, in addition to the efficiency of the system used, the quality of the communication network, and technical protection programs such as encryption techniques. It is necessary to Continuously updating its protocols to enhance the cybersecurity of the smart judicial system [13].
- The need to establish a solid infrastructure for its use requires allocating huge financial resources, especially since it is necessary to use internal networks between courts and judicial bodies that are separate from the external communication network (the Internet). It also includes infrastructure; The applicable legislation and laws, the slowdown in amending and developing them to suit and suit the needs of technological development, poses a major challenge to its consolidation [11].
- Fear that its application may lead to compromising the principles of justice, the conditions for a fair trial, and the guarantees for litigants, which are guaranteed by all constitutions and legislation [4].

Smart litigation procedures

Given the reality of the situation regarding its use in Arab legislation, it has been observed that it is widely applied in some countries, while some of them have permitted the application of a certain number of procedures through it, while continuing to rely on the traditional system of litigation, and others have not applied it to date.

The procedures can be briefly reviewed as follows:

Registering the case in the court's electronic record: The customer enters the court's electronic website, logs in by filling out his data in the system, then browses the judicial services, chooses the type of service required, determines the type of case, and begins filling out the unified application form (claim sheet, which is the same as in traditional litigation). Under the same conditions), his data, facts, and requests, and then attaches his documents and documents supporting his request, confirming his chosen address for notification (announcement) to him and the defendant, and he also pays the fees [5].

Studying the application and checking the documents by the competent employee: The case management office then studies the application and verifies

the authenticity of the attached documents and makes the decision either to accept or reject when there is no legal basis for filing the lawsuit. In the event of acceptance, he will be notified of this, and the lawsuit announcement will be sent to the defendant, and the lawsuit will be determined. A period for the defendant to attach his documents and his opening defense memorandum, and at the same time the case management office transfers the electronic case file to the competent judicial department in the court for consideration.

Preparation stage for the first session of the trial: Then the secretary of the competent judicial committee sends a letter to both the plaintiff and the defendant explaining the date of the session to consider the dispute. The trial takes place remotely using audio-visual communication technology, where the parties enter through the link that is provided to them, and the Verifying their identity directly, and in the event that all parties are present and with the same pleading procedures in traditional litigation and with the legal conditions and judicial guarantees [6] each of the parties, according to his role after being called upon, submits his statements and defences, and the secretary of the session records the minutes of the session and everything that takes place in it, This report is signed by the judge examining the case, and if the statements are complete, it can be decided on the same day or postponed to a later session to complete the evidence or memorandums or postponed by the parties according to their nature. After the issuance of the ruling, the litigant against whom the ruling was issued can appeal it electronically within the legal time limit. In the event of no appeal, the case and the ruling are referred to the Enforcement Department electronically for implementation and follow-up by the competent Enforcement Department. Customers can also use all the judicial services available in traditional litigation, such as submitting interlocutory requests, performance orders, etc.

Guarantees for litigants in electronic lawsuits in the smart litigation system.

From what was mentioned above in the statement of procedures in electronic litigation, the guarantees of litigants guaranteed by constitutions and legislation are considered in smart litigation procedures, despite the fear among some of violating them when using them. Among these principles are:

The principle of publicity and orality of the court: that the trial is conducted publicly in the presence of the public and its knowledge of its procedures, which is a guarantee for the defendant [6], so that public opinion's oversight of the judiciary is achieved, which establishes confidence in him, and achieves the goal of applying punishment for general deterrence [9]. Justice is established for all parties by not violating this principle during trial procedures through technical means [13]. As for the orality of the court, everything that happens in it is public, and the discussions, statements, and defences that are said in it are audible [10].

The principle of prima facie between the parties: the pleading must either be in person, that is, in the presence of the parties at the trial, or in absentia in the event of the absence of one of them [13]. Where each party confronts the other with the evidence it must support its position and statements, in the presence of the judge and the public [9], and it is not permissible to judge a party without having been properly notified under penalty of invalidity [10].

Respecting the rights of the defense: This is by enabling the accused to defend himself, either by proving the corruption of the evidence or rebutting it by proving his innocence [9], which is his right to debate his opponent with the evidence he presents [10], which helps the judiciary in identifying the incident and its truth in order to pronounce a just and sound ruling. .

The principle of equality between litigants before the judiciary at all stages: that each party is given opportunities to present what it has and discuss its evidence and documents regarding what it claims, equally among all, so there is no discrimination based on gender, color, or anything else [12].

The legal basis for smart litigation in some comparative Arab legislation and application experiences:

- **In Algeria:** The legislator adopted it in Law No. (15-03) to modernize and digitize justice by stipulating: creating a central information system for the Ministry of Justice and certifying the authenticity of electronic documents, sending documents and judicial procedures by electronic means, and procedures and conditions for using remote video chats. An internal communication network was used between... Judicial councils and courts at all levels, so it became possible to appeal rulings at the council level, and to view the filed case file without the hassle of going to court [14].
- **In KSA:** It has been widely applied, and the Jeddah Court is considered the first court in the Kingdom to operate with a comprehensive electronic litigation system from the filing of the lawsuit to the issuance of the judicial ruling. Among its applications are the electronic portal for the Board of Grievances, which provides a set of electronic services, including (the Knowledge Window), which includes the laws, regulations, and regulations that it needs. It has the judge, the lawyer, and all parties [7], and the unified portal on the Ministry of Justice website to provide all services electronically, in addition to using the Najez application, which is constantly being developed by a specialized team in the portal [11].
- **In Egypt:** Serious steps are being taken towards its adoption, in terms of creating websites, government applications, and electronic portals to provide judicial services electronically. Law No. (146) of 2019 for economic courts constituted the first stage of digitizing

these courts. However, it is not enough. There must be detailed legal regulation of electronic litigation, at the level of laws. Civil and criminal procedures and special laws [5], and it is currently noted that most of the services of the Court of Cassation, Courts of Appeal, and Courts of First Instance are now available electronically [7], but there is still the problem of how to implement that system in the absence of its own legislation that guarantees no violation of the principle of guarantees. Litigation [10].

- **In the United Arab Emirates:** It is one of the first countries to develop the justice system to achieve the state's strategic goals with complete digital transformation, as the Case Management Office was established, with the aim of facilitating litigation procedures, and information technology means are widely used in litigation [5], [7], Whereas the smart litigation system is based on a solid legal foundation represented by the Constitution and laws that are being amended to keep pace with all developments, including the Civil Procedure Code, to which Chapter Six was added in the last amendment entitled The Use of Remote Communication Technology in Civil Procedures, and includes 12 articles from (332-343), specifically for electronic procedures, and the legislator left the rest of the details to the regulatory regulations, and its articles included all electronic trial procedures, the exchange of advertisements and documents, as well as remote procedures with foreign countries, the Electronic Transactions and Trust Services Law No. 46 of 2021, Federal Law No. 34 of 2021 Combating Electronic Crimes, and other relevant laws. Relevance. In addition to establishing the digital court, which conducts its sessions by preserving the guarantees of litigants and the basic principles of litigation [15].
- **In Qatar:** Its application is based on many relevant legislation and laws, including Law No. (24) of 2017, Law No. (3) of 2019 amending some provisions of the Civil and Commercial Procedures Law, and Law No. (4) of 2019 amending some provisions of the Judicial Authority Law, while adopting the national strategy in the field of artificial intelligence and preparing specialized cadres and the judicial authority. Efficiently [12].

CONCLUSION

There is a difference in jurisprudence in defining the concept of smart (electronic) litigation.

The smart judiciary in some Arab countries is based on a solid and strong foundation, in terms of legislation and legal organization, and in terms of capabilities, expertise, and judicial, administrative, and technical competencies.

However, in some other Arab countries, it still requires a lot of effort to develop it in line with developments to consolidate the rules of justice in society.

In addition, it works to consolidate the rights of litigants in electronic litigation, when applied correctly, with monitoring and supervision by the competent authorities and working to constantly develop the technical protection systems for the judicial system.

In addition to the necessity of producing specialized training and rehabilitation programs for judicial specialists, administrators, and technicians, as well as directing legal awareness and knowledge campaigns for all individuals in society, to facilitate its proper use.

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