

Aspects of Remote Litigation in the Stages of Administrative Lawsuits

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Abstract:

This study examines the manifestations of remote litigation in administrative cases in Algeria within the framework of modernizing the justice system. It traces the integration of electronic means at various stages of administrative proceedings, highlighting the legal and procedural basis for implementing e-litigation from filing a lawsuit to enforcing judgments. The study also addresses the most significant practical issues and challenges hindering the widespread adoption of this type of litigation, particularly given that current technological advancements necessitate keeping pace with them, even within the justice system.

The Algerian legislator has adopted electronic litigation in the Code of Civil and Administrative Procedure, and the justice sector has begun to apply it to all types of lawsuits, including administrative ones, gradually.

Keywords: Remote litigation, video trial, electronic payment, electronic notification, administrative lawsuit.

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INTRODUCTION

Algeria, like other countries, has moved towards modernizing government institutions and public service facilities, adopting a series of changes to their traditional functions in light of the shift towards using information technology within the services of its institutions and facilities, in order to move towards the concept of e-administration and then e-public services.¹

As part of the major structural reforms, the Ministry of Justice launched electronic platforms and established legal frameworks in the field of transition towards e-administration, including what is called remote litigation or electronic litigation.

The first signs of electronic litigation in Algeria began to emerge in 2007, through the statement of the President of the Republic on the opening day of the 2007-2008 judicial year, in which he said: “The reform of justice is not an end in itself, but rather a transitional means to elevate the judiciary to the challenges imposed by the scientific nature of internal and external transformations.”²

The modernization of the Algerian justice system continued, through the parliament’s discussion of the draft law related to this field, which is about electronic litigation, and it was implicitly approved through the statements of the deputies in the minutes of the public session 19 held on Monday, November 24, 2014 to continue discussing the draft law related to the modernization of justice.³

Subsequently, Law N. 15-03 concerning the modernization of justice was issued, containing 16 articles, in which the concept of electronic litigation was addressed in the three clauses of the provisions of its first article:

- Establishing a central information system for the Ministry of Justice.
- Sending judicial documents and records electronically.
- Using remote video conferencing technology in judicial proceedings.

To modernize the justice sector, the provisions of Article 2 were established, encompassing the regular and administrative judicial organization, including the Court of Conflicts.⁴

Article 9 of the same law clearly states that Algeria has adopted the idea of electronic litigation through electronic notification and sending of judicial documents.

Since the subject of remote litigation is broad and has multiple horizons, we have chosen to limit this study to administrative litigation. **So, what are the manifestations of remote litigation in administrative litigation? And are they the same as those followed before the ordinary courts?**

To answer this problem, the analytical and descriptive approach was adopted in analyzing the legal texts related to remote litigation in Algerian law and applying them to the reality of the justice sector and monitoring its application to criminal and civil cases and studying the possibility of using electronic litigation methods in administrative justice, and this was done through two main axes:

Chapter I: Manifestations of electronic litigation in the administrative case adjudication phase and its impact on the guarantees of judicial proceedings

In contrast, the Algerian legislator, through the new amendment to the Code of Civil and Administrative Procedure, sought to move from a paper-based system to an electronic system for filing administrative lawsuits, and to manage the case electronically while ensuring the preservation of a fair trial, as follows:

First main title: The electronic registration and filing stage of the administrative lawsuit

The stage of registering and filing the administrative lawsuit electronically is the starting point in the course of digital litigation, due to the legal implications related to the commencement of the litigation and the running of deadlines, within the framework of the legislator's direction towards digitizing litigation procedures.

1. Registering the administrative lawsuit electronically

The first experience of electronic justice in the administrative field is to allow the litigant to file his lawsuit by electronic means, which is embodied in Article 815 of the amended and supplemented Code of Civil Procedure⁵, which states that: "Lawsuits are filed before the Administrative Court by paper petition or by electronic means", the same applies to the procedures for filing a lawsuit before the Administrative Courts of Appeal, because Article 900 bis 01 of the amended and supplemented Code of Civil and

Administrative Procedure referred to the application of the provisions of Articles 815 to 828 of the same law to the Administrative Courts of Appeal.⁶

The electronic registration of an administrative lawsuit differs from the traditional registration in front of the administrative court clerk's office, because it is done via the internet and through applications provided by the Ministry of Justice, and access to them to register the lawsuit is done by the litigant himself or his lawyer, if the registration is done by the lawyer, he sends the electronic newspaper to the court website, accompanied by his government email address and his mobile phone number for electronic correspondence⁷, but if the plaintiff himself wants to register his case electronically, he must first have some procedures and technical capabilities, as filing his case requires him to have a computer connected to the Internet, and on the computer, there must be a web browser such as Explorer, file reading programs, and programs to read images that are entered via scanner, in addition to the scanner.⁸

Once these means are available to the litigant, he can file his lawsuit using his computer connected to the internet by following these steps:

Accessing the electronic court website through its online portal, where a guide is provided on how to use it, as well as different forms according to the types of cases the court is waiting for and the documents required to file the lawsuit. It is possible to use a company specializing in electronic document transfer, as is the case in America.⁹

In Algeria, one accesses the website of the Ministry of Justice mjustice.dz, selects the court before which the case is to be filed, then clicks on the Menu to display the list of electronic services, then the person concerned clicks on the first option (electronic prosecution) to show him two options: registering a complaint or petition / or the outcome of a complaint or petition.

Then he clicks on (Register a complaint or petition) to display a remote complaint or petition registration form containing the following information:

- Complainant's details: Name and title, gender, date and place of birth, birth certificate number, father's name, mother's name and title, national identification number.
- Information on the identity document (type, number, date of issue, and issuing authority).
- Address and municipality of residence.

- Mobile phone number and email address.

After completing the form, he clicks on Next, and the login code is sent and the registration is completed. This complaint/petition is then automatically transferred to the representative of the judicial authority to which the petition is addressed, to take the appropriate action and deal with it.

A window will then appear confirming the successful registration of the petition and indicating the need to keep the username and password provided to the user to remotely check the status of their petition.

Once the "OK" button is clicked at the bottom of the window, a printable receipt will appear on the computer screen, showing the status of the petition/complaint. The petitioner must keep this receipt to access the online petition/complaint status portal at any time.¹⁰

2. Electronic payment of court fees:

The use of the electronic internet has expanded, and there are multiple methods and techniques for technical applications in payment systems. Some of them rely on plastic cards, and some rely on communication technology such as networks, as well as plastic money similar to paper money through its encryption and it is read by special devices. Then many technologies appeared after that, leading to smart cards.¹¹

With reference to Algerian legislation, article 543 bis 23 of the Commercial Code mentions two means: debit cards and payment cards available in both public and private banks, in addition to the electronic money transfer service between balances, and payment methods that fall within the context of the description of Articles 27 and 28 of Law N. 18-05 relating to electronic commerce, which are represented by payment methods used in electronic commerce transactions such as: **Automatique Telle Machine ATM** and **Terminal de Paiement Electroniques TPE**, which must have dedicated payment platforms that are independent exclusively for banks approved by the Bank of Algeria and Algeria Post, and are under the supervision of the Bank of Algeria to ensure that they meet the requirements of interoperability, data confidentiality, integrity and security of its exchange.¹²

In this context, it can be said that the safest way to pay court fees electronically is through electronic money transfers by electronic banks, this system allows the transfer of funds from one bank account to another in a secure electronic manner. This means that the litigant pays the court fees

directly through this process, with the requirement to attach the payment receipt to the file sent to the remote case registration application.

It should be noted that lawyers can now make payments electronically through the digital platform dedicated to the electronic exchange of memoranda and petitions. The automated system automatically determines the amount to be paid, i.e., the court fee, based on the type of dispute, according to each chamber or section.¹³

3. Electronic Notification of Administrative Lawsuits to the Parties Concerned:

The notification stage is one of the important stages in litigation procedures in general and administrative procedures in particular, as notifying the parties and informing them of the proceedings represents the practical application of the principle of confrontation and granting the right to defense to the parties concerned. Within the framework of modernizing and digitizing litigation procedures, article 840 of the Civil and Administrative Procedures Law stipulates the possibility of electronic notification of all procedures taken and investigative measures to the parties. However, it is noted that the text of Article 840 does not define electronic notification for us, nor does it specify its means, which means that it leaves the field open to all possible means such as mobile phone, fax, or official email of governmental or non-governmental entities. For electronic notification to be valid and legally sound, it must be accompanied by the subject of the lawsuit and its statement of claim, the lawsuit number, its location, the date of its convening, and before which circuit of the court in the event that there are multiple circuits.

But the question remains: what guarantees are there that the notification reaches the defendant? It should be noted that for electronic notification to be effective, the plaintiff must know the defendant's email address, which is recorded in the statement of claim. The competent court clerk then notifies the defendant via the electronic court web sit, the notification arrives as an official government email, including the case number, the date of the hearing, and a unique code that allows the defendant to access the application, view their case remotely, exchange memoranda electronically, and follow up on court decisions.

If the plaintiff does not know the defendant's email address, the court clerk, through a network link with their civil status database, requests the

defendant's information for notification purposes, such as his place of residence, his shop, or his email address.

Returning to the question raised about guarantees of the notification reaching the defendant, the matter depends on activating the role of the electronic court and the informational communication between them, as the electronic court website or the **"NYABA E"** application can confirm informing the defendant by sending a data message to all periodic services in order to notify him of the need to check his email to ensure he is aware of the content of the lawsuit petition or one of those residing with him.¹⁴

4. Registering the electronic lawsuit petition

Registering a lawsuit petition, whether through traditional or electronic means, entails a number of legal consequences, perhaps the most important of which is the beginning of the calculation of time limits and the interruption of the statute of limitations for the lawsuit. Here, the question arises as to the date that is considered for registering the lawsuit petition electronically: Is it the date the petition enters the court's computer system or the platform designated for that purpose, or is it when the competent clerk begins to deal with this petition, review it, process it, and complete the special litigation procedures?

Referring to the amended and supplemented Algerian Civil and Administrative Procedures Law, we find it devoid of any reference to this point. In contrast, we find that the Emirati legislator stipulated in Article 15 of the UAE Federal Law on Transactions and Trade that: "The sending of the electronic message is considered to have occurred when it enters an information system under the control of the originator." By applying this text to the electronic lawsuit petition, we find that the date of its registration is the time of its entry into the information system designated and specified by the court.¹⁵

Therefore, it can be said that the electronic petition is considered restricted from the date of its entry into the electronic platform, as is the case with the registration of the petition in a special register according to the date of its arrival, as stipulated in Article 16 of the amended and supplemented Algerian Code of Civil and Administrative Procedure. This principle can be applied pending the issuance of regulatory texts that clarify this.

Second main title: Electronic litigation

After a case is filed and registered with the court, the parties proceed to the hearing stage before the Administrative Court or the Administrative Court of Appeal.

The parties are notified of the hearing date, and the legal proceedings begin, consisting of oral arguments. This involves the parties attending the hearings, submitting their defense and response briefs, and providing supporting documents. This applies to traditional oral arguments. However, in electronic litigation, parties to an administrative case can attend hearings remotely, as the proceedings are conducted electronically. Electronic oral arguments are defined as "statements and actions taken by the parties or their representatives in court sessions using modern technologies."¹⁶

Since we are dealing with an electronic court, written documents are stored on an electronic medium accessible only via computer. Therefore, a computer must be provided in the courtroom so that the litigants can review them.

The electronic court system, which relies on an electronic medium, allows for the virtual attendance of litigants at hearings (trials), thus achieving the principles of oral proceedings, transparency, and confrontation between the parties through the internet and direct audio-visual communication, without the physical presence of the litigants in the courtroom.¹⁷

However, it should be noted that administrative cases primarily rely on written pleadings, except in certain special circumstances. Litigants usually hire lawyers to represent them in their cases. Therefore, the lawyer is obligated to prepare written briefs to present their arguments and observations, either by submitting them directly to the court or by submitting them electronically through the platform designated by the court, which also allows for the electronic exchange of petitions between lawyers.¹⁸

Regarding the implementation of the principle of due process in electronic litigation procedures, this is achieved through electronic communication using audio and video technology (video conferencing). This technology has been applied in remote trial procedures in criminal matters, as well as in investigative procedures¹⁹, the procedures for remote trials are defined as follows:

- The existence of a valid reason for implementing the remote trial, such as distance or the need to ensure the proper administration of justice.

- The adherence to the principles of due process stipulated in the Code of Criminal Procedure.
- The requirement that statements be recorded on a medium that guarantees the integrity of the statements and procedures, and that the medium used in the video trial not be designed for secret transmission.
- The requirement that statements be recorded on a medium that guarantees their integrity and attached to the case file as a safeguard for the accused.
- The requirement that the clerk of the correctional facility prepare a report on the use of the video trial technology, sign it, and then send it to the head of the competent judicial authority for inclusion in the case file. This is done with the knowledge of the head of the correctional facility where the accused is detained.

It should be noted that this technology – the video trial – also enables the hearing of a witness whose identity is concealed through technical means that allow for anonymity, most notably hearing via remote video chat and using methods that hide the witness's identity in order to protect him. ²⁰

The number of video trials during the first year of its launch reached 153 trials, in which video conferencing technology was used to connect judges from the Supreme Court and the Council of State with the rest of the judicial councils and courts, as well as in the periodic meetings between the heads of councils, chambers and public prosecutors with the heads of courts and public prosecutors, and judges in remote areas, which are far from them, especially in the south. The first application of the video court was on October 7, 2015, at the Koléa Court, in the misdemeanors section, headed by Judge “Ben Bouza Abdel Raouf”. As for the international level, the first application of it was on July 11, 2016, between the M’sila Court of Appeal and the Nanterre Court in France, and another trial between the Setif Court of Appeal and the Loire Court in France.

As for administrative cases, the application of videoconference is not far removed from this. Regarding the principle of transparency, it can be envisioned that the court allows litigants access to an electronic system that enables them to connect to the courtroom and the proceedings. They would be given a username and password to access the application and view the proceedings, as well as anyone else with an interest in the case.

Therefore, it can be concluded that an electronic trial is conducted with the simultaneous presence of all parties to the case and their lawyers. They

must be connected to the network established by the court, with both audio and video capabilities. The judge then opens the electronic hearing, allowing both the plaintiff and the defendant to appear, and the proceedings are automatically recorded. ²¹

Third main title: Presenting evidence and documenting the proceedings

Evidence is one of the means of persuasion presented before the administrative judge to defend the alleged facts. Regarding the use of modern technology in electronic litigation to prove administrative claims, it can be said that this evidence consists of electronic documents, judicial presumptions, expert opinions, and on-site inspections.

Concerning electronic documents: The Algerian legislator has explicitly recognized the legal validity of electronic writing in Article 323 bis 1 of the Civil Code. Therefore, an electronic document can be used as evidence, provided it is electronically signed by the issuing party and authenticated by the competent, licensed, or accredited authorities to verify the attribution of the electronic signature to a specific individual, based on approved authentication procedures. Furthermore, stored electronic documents can be retrieved for future reference. In this context, it is important to note that administrative decisions and contracts, which constitute the basis of administrative claims, are now issued as electronic documents requiring electronic means of verification. If a document is submitted in PDF format or scanned, the judge must verify its authenticity, as it may be forged. This verification can be done using legally available methods, such as handwriting comparison. ²²

Fourth main title: Judicial expertise and inspection:

The Algerian legislator has not explicitly addressed electronic expertise in the field of evidence. However, it can be argued that the administrative judge can utilize it as a means of proving administrative claims by accessing a dedicated database that identifies experts in all fields. This involves contacting these experts electronically to request their technical expertise on any matter presented to the judge. The administrative judge can also request all relevant documents pertaining to the expert opinion.

Regarding summoning experts to appear and reviewing their expertise, the administrative judge can contact them electronically through screens or a dedicated application. Parties involved in the case can also attend these sessions.

Concerning site visits, the administrative judge can access information, conduct site visits, and monitor experts using satellite imagery via Google Earth or similar services, for example, in cases involving building code violations. The judge can also summon surveyors and engineers to hear their testimony at their workplaces or offices. Furthermore, the judge can receive expert reports and discuss their findings within the electronic court system and through other communication channels.²³

Chapter II: : Issuing and enforcing judicial rulings electronically and the prospects for establishing remote litigation in administrative justice.

In the age of digital technology, administrative justice is no longer what it used to be; issuing and enforcing rulings has become possible electronically, which opens up broad prospects for remote litigation. This transformation not only speeds up procedures but also makes justice closer and easier for every litigant. However, achieving this transformation in the field of administrative justice has its challenges and standards, which will be addressed later.

First main title: Electronic Adjudication of the Case

Once a case is ready for adjudication, the administrative judge closes the proceedings and issues a ruling on the date of the hearing or at a later date (a subsequent hearing) that he determines²⁴. The ruling in an electronic administrative case goes through an electronic deliberation phase, which takes place remotely with the judges meeting without their physical presence. After the deliberation is complete and a final decision is reached by majority vote, the ruling is written and then signed by the judges electronically on the case file.²⁵

The issuance of administrative court rulings is public after being recorded using modern technology. The ruling is considered served to the concerned parties as soon as the pronouncement of the judgment is broadcast on the court's website²⁶, through an application developed by the Ministry of Justice. This application allows litigants to access the status of their cases and the text of the rulings, and to obtain a standard copy without having to travel to the court that issued the judgment or decision.

To access the services of the "National Electronic Window," the concerned party, or their representative or lawyer, must submit proof of their

capacity in the complaint or case to the nearest judicial authority (court or judicial council). The clerk at the unified window will then access the national database and conduct a search based on the data related to the case, ruling, or decision. This procedure will later be extended to administrative courts as well.²⁷

Second main title: Electronic Enforcement of Judgments

The enforcement of judgments electronically raises several legal issues in Algeria, particularly given the absence of an enforcement judge, unlike in some countries such as Egypt. In Egypt, electronic judgments are enforced by an enforcement judge after verification and review, via the electronic judicial link. Based on the electronically approved version, enforcement decisions are issued immediately upon viewing the judgment electronically. This method achieves speed in enforcement, eliminating the need for traditional methods of writing, copying, and obtaining official documents.²⁸

As for the means of executing court rulings electronically in Algeria, this can be done by activating email for all administrations and institutions, or by implementing them through the court bailiff by creating an application that allows him to execute rulings electronically.²⁹

Third main title: Prospects for Generalizing the Remote Litigation System in All Stages of Administrative Proceedings

Electronic litigation, in its various forms, has become a reality in a world characterized by scientific and technological advancement. Electronic courts and e-arbitration centers have emerged as a result of academic and scientific efforts focused on developing technology and adapting it for practical use in line with ongoing developments. Efforts continue to generalize the remote litigation system to all stages of proceedings, particularly administrative ones. This system is currently more widely adopted in criminal proceedings than in administrative ones. However, there are signs of its implementation in the Algerian administrative judiciary, starting with the electronic filing of petitions, electronic payment of court fees, and electronic notification of parties, moving through electronic trials. The application of remote litigation to methods of gathering evidence, expert opinions, and site visits is anticipated, culminating in the electronic execution of administrative court rulings in administrative decisions and contracts. This will greatly contribute to faster execution and procedures, thus protecting the rights of those concerned.

Electronic litigation, in its various forms, has become a reality in a world characterized by scientific and technological advancement. E-litigation in the field of administrative justice greatly facilitates the elimination of bureaucratic procedures, such as visiting multiple locations to file and register a lawsuit, paying fees electronically, and completing notification processes. It also simplifies travel and saves time, as there is no need to visit the court to review the court's decision or judgment, nor is there a need to travel to attend hearings, especially when the administrative case is before the Administrative Courts of Appeal or the Council of State, which is located in the capital. Furthermore, case files can be sent instantly from courts of first instance to courts of second instance, or to expert offices.

The remote litigation system also saves the expenses, effort, and time associated with the process server traveling to the defendant's residence.³⁰

While e-litigation has positive implications for the administrative litigation system, these benefits are not absolute. Achieving optimal implementation of remote litigation within the Algerian judicial system faces several challenges, including:

- The difficulty of verifying the litigants' legal standing and the authenticity of electronic documents.

- The lack of electronic signature equipment and the absence of clear definitions of acceptable transactions, coupled with inadequate legal provisions for deterring crimes related to electronic signatures.

- Limited access to and adoption of electronic payment methods, weak internet connectivity, network outages in some areas, and a general distrust of communication devices and the internet, leading to a preference for cash transactions. All of these factors contribute to a gap between the planned implementation of e-litigation across all stages of proceedings and its actual application.

Despite the challenges, the Ministry of Justice, through its adoption of several measures, most recently the introduction of an electronic litigation system, seeks to establish electronic litigation in civil and administrative matters. This is feasible given its relative success in criminal cases and the fact that most procedures for filing and adjudicating lawsuits are common to criminal, civil, and even administrative matters.

Electronic litigation in administrative matters (i.e., without in-person hearings) could be made optional as a first step, then expanded and eventually

made the sole method of litigation once the necessary material and human resources are in place. ³¹

Conclusion

This study concludes that remote litigation in administrative cases constitutes one of the most important aspects of modernizing the justice system in Algeria. The Algerian legislator has established the initial legal framework for adopting electronic means at various stages of administrative litigation, which contributes to expediting procedures, improving the quality of judicial services, and strengthening the principle of access to justice. However, the practical application of this system remains partial and limited in its impact due to a number of technical, organizational, and even human factors, as well as the inadequacy of some legal texts to keep pace with the actual requirements of electronic litigation.

Based on the foregoing, this study recommends the necessity of completing the legislative framework regulating remote litigation, particularly by precisely defining its concepts, procedures, and safeguards, developing the digital infrastructure of administrative courts, and generalizing electronic signature and payment methods. It also recommends training judges, court officials, and litigants in the digital field, in addition to adopting electronic litigation in administrative cases gradually and on a voluntary basis in the first phase, as a prelude to its later generalization, in a way that achieves a balance between the requirements of digital transformation and the guarantees of a fair trial.

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⁵Law N. 22-13 of July 12, 2022 amending Law No. 08-09 relating to the Code of Civil and Administrative Procedure, Official Gazette number. 48 issued on July 17, 2022.

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⁹ Khaled Hassan Ahmed Lotfi, *ibid*, p. 129.

¹⁰ - More than 50 complaints were registered in the first few hours alone after the launch of the electronic platform (NYABAE), and this information was published on the website of the Algerian One channel <https://bit.ly/ELDJAZAIRIAOne-one> It has been viewed on October 1, 2023 at 22:45.

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¹⁶ - Khaled Mamdouh Ibrahim, op.cit, p. 133.

¹⁷ - Khaled Mamdouh Ibrahim, ibid, p. 134.

¹⁸ - Al-Jazi, Jihad Daifallah, op.cit, p. 207.

The lawyer accesses the digital platform dedicated to the electronic exchange of memoranda and petitions available online via the following electronic link <https://tadjrib.mjustice.dz>, using the username and password granted to him at the judicial authority level by virtue of a document issued to him by the court clerk.

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²¹ - Al-Jazi, Jihad Daifallah, op.cit, p. 213.

²² - Al-Jazi, Jihad Daifallah, ibid, p. 211.

²³ - Boukhalfa Abdelkrim, op.cit, pp. 137, 138.

²⁴ - Article 269 of the amended and supplemented Code of Civil and Administrative Procedure.

²⁵ - Article 270 of the amended and supplemented Code of Civil and Administrative Procedure.

²⁶ - It is the national electronic window.

²⁷ - Boukhalfa Abdelkrim, op.cit, pp. 138, 139.

²⁸ - Mahmoud Ashraf Jawdat Muhammad, op.cit, p. 118.

²⁹ - Boukhalfa Abdelkrim, op.cit, p. 140.

³⁰ - Khaled Hassan Ahmed Lotfi, op.cit, p. 202.

³¹ - Ben Ayred Abdelghani, Badiaf Hajar , op. cit, pp. 26, 27, 28.