

# TRANSITION TO E-LITIGATION AS A MECHANISM TO ACTIVATE E-COURT IN JORDAN: AN ANALYTICAL STUDY

**Osamah Al-Naimat, Philadelphia University**  
**Noor Akiyf Al-Dabbas, Al-Ahliyya Amman University**  
**Mohammad Mufdi Faleh Maaqqbeh, University of Jordan**

## ABSTRACT

*The issue of litigation via the Internet or what is known as electronic litigation (e-litigation) is a significant matter in litigation nowadays. The Jordanian judiciary has adopted this method to confront the crises that the state is going through which prevents holding court hearings in courtrooms. In fact, litigation has several advantages to the progress of the proceedings, such as reducing the burdens on the parties to the claim, lawyers, judges, and citizens. Therefore, this study seeks to address the concept of this modern mechanism, its methods, and Jordan's experience in applying electronic courts remotely. The current study concluded that we are encountering a new mechanism to implement a new judicial system based on the foundations, rules, legislation, and judicial rulings in the era of information and digital technology, which has virtually reduced the world to a global village. Truly, everything now can be digitalized, whether they were sounds or images. Through utilizing computers connected to the Internet and via e-mail, electronic courts can facilitate the settlement of cases and their procedures for litigants and the implementation of judgments electronically more instantly.*

**Keywords:** Electronic Litigation, Electronic Court, Litigation, Electronic-Discovery.

## INTRODUCTION

One of the most significant developments in this era is the rapid development that the world is witnessing in the field of communications and information technology. The interaction between them has led to the emergence of an international information network known as the Internet. The latter has enabled communication in the form of digital exchange of information within the framework of a unified protocol between electronic devices and networks around the world. Which casts a shadow over most of life's fields, which made the method of interaction accessible within the least time and effort, and perhaps the most prominent of these capabilities and services it provides are electronic education, e-commerce, E-government, and finally, electronic litigation (remote litigation).

Despite the foregoing, the judiciary department did not achieve remarkable progress compared to the private sector and some other government offices, which contributed to the delay in proceedings in the courts and the delay in adjudicating cases. Which unquestionably may affect social, economic, and security life, there is, therefore, an urgent need to solve the problems of adjudication of claims, facilitate litigation and keep up to date with developments in

the world by utilizing electronic technology in litigation procedures at the level of judicial bodies in the Hashemite Kingdom of Jordan.

### **Study Approach**

The researchers adopted the descriptive analytical approach to regulating the various concepts related to the mechanism of electronic litigation, and the mechanism of the electronic court's work in the Jordanian judiciary, by relying on specialized scientific material and available electronic websites.

### **Study Plan**

The topic of the study was divided into two main chapters and a conclusion as follows:

- The first chapter: What is electronic litigation?
- The second chapter: electronic litigation methods and its applications in the Jordanian judiciary

### **Electronic Litigation**

The term electronic litigation emerged at the beginning of the third millennium in 1996 in the jurisprudence of law considering contemporary technological progress and conducting the settlement of litigations electronically (Al-Manzalawi, 2007). E-litigation has a positive effect on the litigation process in general, as it contributes to investing time by employing modern procedures in achieving justice among citizens in the shortest and fastest way, and by the expansion of the litigation circle outside the spatial jurisdiction set for the court by law to reach other regions, which enables the Ministry of Justice to Overcome the problem of geographical distance between governorates and cities and their exorbitant costs (Shdeifat, 2015).

Given the advantages and great significance of modern electronic litigation technology, we will try to define its concept, characteristics, types, and conditions that must be considered for its application.

### **The Concept of Electronic Litigation**

The idea of electronic litigation is derived from the idea of electronic management, which means moving methodically from the provision of services and information to people in its traditional paper form to the electronic form via the Internet. It is the development of the performance of the judiciary in terms of administrative or judicial services.

Jurisprudence has adequately addressed the concept of the technology of electronic litigation, as it defined it as:

*“The authority of a specialized group of regular judges to hear the claim and initiate judicial procedures utilizing new electronic means, within an integrated information system or systems, with integrated parties and means, adopting the methodology of the international network technology (the Internet) and computer file programs. In addition to review the cases, adjudicate them, and enforce the judgments electronically to reach a fast adjudication of the lawsuits and facilitate the litigants” (Al-Sharaa, 2010; Bakr, 2015).*

We define electronic litigation as:

*“The utilization of electronic means of visual and audio communication technology through the international network (the Internet) in the initiation of the lawsuit and even the adjudication of the judicial disputes brought before the court remotely”*

### **Characteristics of Electronic Litigation**

Electronic litigation is characterized by a set of features that make it different from traditional litigation that enables it to keep pace with development considering the information technology revolution, and these characteristics are summarized as follows:

1. Moving from the paper system to the electronic system.
2. The actions of receiving and sending documents are faster.
3. Using electronic media in carrying out litigation procedures.
4. Speeding up the adjudication and application of litigation procedures.
5. Proving litigation procedures electronically.
6. Using electronic means to pay the lawsuit's fees and expenses.

### **Types of Electronic Litigation**

There are four main types of remote video chat systems which are (Shdeifat, 2015).

1. Electronic litigation through the point-to-point communication system: Under this system, direct communication takes place through videoconferencing between the courtroom and the other place where the defendant or the witnesses are present.
2. Electronic litigation via the switch or active speaker system: The communication is carried out through videoconference linking several parties in different locations such as if the court is in a country, witnesses are in a second country, and the defendant is in a third country.
3. Fixed or standardized continuous attendance system: Under this type, communication takes place between five different locations which are geographically distant from each other, where the courtroom is in a place that differs from the other four locations where the rest of the parties to the case, "victim-accused," witnesses, and others are present.
4. Advanced continuous attendance system: Based on this latter type, audio-visual communication befalls distantly between the main hall in which the investigation procedures are conducted, and between many other places far from it, and the system is considered one of the most recent application systems for the technology of video-distance conversation.

### **Terms of the Application of Electronic Litigation**

The use of the electronic litigation mechanism is restricted by several conditions. International law has set three basic conditions, which we review as follows:

1. The use of electronic contentious technology does not conflict with the law of the country to which it is required to apply.
2. The availability of means and capabilities that assist the state concerned with the implementation of the electronic litigation mechanism.
3. Restricting the use of the electronic litigation mechanism to hear witnesses and experts from different regions.

## Means of Electronic Litigation and Its Applications in the Jordanian Judiciary

The idea of electronic litigation adopted by countries has been implemented by legal means, relying on technical means that keep pace with all developments in the field of electronic communications and information, as this leads to the speeding up the application of litigation procedures.

### Legal Means of Electronic Litigation e-Discovery

The legislation is considered one of the most prominent means that assist in the electronic litigation process which is represented in a set of written legal rules issued by the legislative authority in the country. They are issued to facilitate the implementation of litigation procedures electronically commensurate with the technical progress using modern means of communication.

The realization of these electronic procedures is done by excluding the traditional legal rules and issuing a new law that organizes litigation procedures electronically or by applying the traditional rules and choosing what is suitable for the application of electronic litigation, which passes through stages starting from submitting the case list electronically via e-mail to the issuance of the ruling.

The importance of legislation emerges as a focal point and a legal means for implementing electronic procedures to achieve justice and catch up with the developed world (Al-Kaabi & Al-Karawi, 2016).

There have recently been many calls in Jordan for the need to regulate the legislation on electronic proof of evidence and to review the law of evidence. Nevertheless, the Jordanian legislator has not been able to comprehensively address these issues. Where Jordan has taken limited actions regarding issuing partial legislation to electronic as a response to the call of the World Trade Organization, of which Jordan is one of its members.

The Jordanian Electronic Transactions Law No. (15) of the year 2015, Article (17), considered the electronic record, the electronic bond, the electronic message, or the protected electronic signature produces the same legal effect and have the same evidential weight designated to the ordinary bond "*written document*" and the parties of the electronic transaction may use it in an argument for proofing evidence (Law, 2015).

In this regard, we cannot overlook the legislative amendment mentioned in Article (2) Paragraph (a, b, c and d) of the Jordanian Evidence Law No. 22 of 2017, which emphasized that fax, telex, and e-mail have the same strength as regular bonds if they are coupled with the testimony of whoever sent them or who received them and that electronic messages also have the same strength as ordinary bonds in proof without the need for testimony if the conditions required by the Electronic Transactions Law are fulfilled (Law, 2017).

Moreover, the amendments to the Code of Civil Procedure No. (24) for the year 1988, regarding the fifth article, the second paragraph, stipulates the possibility of making notification by cell phone or any other means specified by the system, and that the third paragraph of Article (58) has specified the conditions and procedures for utilizing electronic means (Legislation, 1988). Also, we find that the seventh paragraph of Article (81) of the same law emphasized hearing witnesses by using modern means of communication without being brought before the court.

Considering what was mentioned in the previous articles stipulated in the Code of Civil

Procedure, the Regulation for the Use of Electronic Means in Civil Judicial Procedures No. (95) of 2018 was issued (Law, 2018). This system emphasized the use of modern electronic judicial procedures in civil trials, starting from the registration of the judicial case and ending with the issuance of the ruling. This system has adopted the electronic means of conducting judicial notifications represented in e-mail and textual means through the cell phone and the electronic account created for the lawyer.

Electronic litigation also included criminal proceedings, as the system of modern technology means in criminal proceedings No. 9/2003 of 2018 was introduced. It included the use of modern technology means in courts, public prosecution departments, and reform and rehabilitation centres and enabled the court to use these means on its own or based on the request of the parties to the case provided the fulfilment of all the legal guarantees to the parties to the case and the basic principles governing litigation before the criminal courts.

### **Technical Means in Electronic Discovery**

Today, global advances in technology have contributed to the dependence on the Internet in various sectors of transactions, which has resulted in the need to establish electronic judicial bodies to help bridge distances and remove barriers of all kinds between parties to prosecutions. These electronic means are represented in the following:

#### **Email**

E-mail is one of the most valuable advantages of the Internet. It indicates sending messages and correspondence over the Internet. These messages are used in the field of electronic litigation by receiving and sending judicial notifications, verdicts, case files, and regulations that are sent between the parties to the case.

#### **The World Wide Web**

This network is considered one of the main networks on the Internet, which is called the (WEP), as there are many websites on the World Wide Web, and it is considered a basic pillar of electronic communication in all areas, including the field of electronic litigation.

#### **Wi-Fi Service**

It is a type of network wireless protocol that allows devices to access the Internet without the need for internet wires. It is one of the most popular means of transmitting data wirelessly at a fixed location.

#### **Telnet Service**

It is an application protocol used on the Internet to provide a bidirectional interactive text-oriented communication facility using a virtual terminal connection. This service represents a remote link used in commercial operations, which is what is called today the electronic commerce network.

## **Electronic Court**

Undoubtedly, to implement electronic litigation procedures, there must be a court that depends on its procedures on electronic means, as judges begin to review cases electronically through this court and following legislation and legal regulations governing their procedures.

The truth is that electronic litigation in and of itself represents a technical information organization that allows litigants to record their lawsuit, present evidence, and implement it.

In the following section, we will discuss the definition of electronic court and how to dispute before this court, as well as the means that are used in electronic litigation.

### **The Definition of the Electronic Court**

E-Court is a location in which matters of law are adjudicated upon, in the presence of qualified Judges, a well-developed technical infrastructure, and accessibility to the Internet. This infrastructure is usually designed to enable parties, citizens, and lawyers to better operate some administrative and procedural aspects of the court's functions, such as presenting evidence, filing judicial records (electronic court filing), or receiving court decisions and testimony remotely.

### **The Litigation Mechanism through the Electronic Court**

Electronic litigation is a technical organization of information that assists plaintiffs to register their lawsuit, present their evidence, attend hearings, issue verdicts, and execute electronically without the need for physical attendance.

And it demands the achievement of a set of requirements including establishing network platforms, training of human capacities, i.e., judges, technicians, jurists, and lawyers. It also requires the appointment of technicians specialized in computer technology and software, programmers, network operators, and network engineers. In addition to the lawyers who are prepared properly to carry out their roles electronically before the electronic court, as registering the lawsuit, submitting requests and regulations, hearing, or discussing witnesses, pleading (Al-Sharaa, 2010).

Generally, electronic courts also need a set of means to effectively facilitate the litigation proceedings. These required means are the electronic means, the availability of a court website, and platforms on the Internet. As well as a suitable infrastructure to support the utilization of technology.

### **Qualifying Elements for Electronic Litigation (Human Potential)**

To implement electronic litigation procedures effectively through the virtual court, three basic elements must be qualified including (Al-Kaabi & Al Karawi, 2016):

1. Judges specialized in the field of electronic judiciary: They are a specialized group of regular judges, who conduct trials through a website through the electronic court, which has a website on the Internet within a judicial system which is known as the Judicial Informatics Department (Al-Sharaa, 2010).
2. Websites administrators & operators: Besides the judges, there are qualified staffs, which consists of a group of jurists and specialists in computer technologies and software and designing and managing websites, who are qualified to work in this area.
3. Managing websites and programmers: Electronic litigation requires the existence of the site management

and its programming, which is entrusted to people who are scientifically qualified in the field of informatics and electronic programming, and they are often a group of technicians specialized in the electronic field.

4. Information lawyers: The term "*informatics lawyer*" shall be given to a lawyer who has the right to register a lawsuit and to plead in an electronic court, which represents a modern type of professional practice of law where they are required to have competencies in computer science and communication systems and design programs and websites.

### **The Difficulties Facing the Implementation of Electronic Litigation and their Implications**

Various complications are facing electronic litigation technically and legally and to overcome these difficulties, a unified law must be developed that regarding the implementation of electronic devices in the substantive and procedural legal.

#### **First: Technical complications**

Actually, when a judge is exercising electronic trial through the electronic court he faces several challenges that can be summarized as follows:

1. Weak internet penetration.
2. The existence of piracy acts on computers.
3. The spread of viruses on electronic devices.
4. Information literacy is present.
5. Poor infrastructure for the telecommunications sector.
6. Poor knowledge of the foreign language hinders access to the Internet.

#### **Second: Legal and administrative barriers**

The electronic litigation process faces several technical, legal, and administrative barriers including:

1. The lack of adequate legislation regulating the provisions of remote litigation.
2. Legal illiteracy, i.e. the lack of a widespread legal culture.
3. The lack of flexibility in the judiciary of some countries towards the application of rules and procedures for electronic litigation over the Internet.
4. Lack of the provision of the material resources to construct a proper infrastructure to conduct electronic litigation easily.

#### **Third: Positive Consequences of Electronic Litigation**

The application of the electronic litigation procedures system results in a set of positive consequences, which are:

1. The disappearance of all paper documents and editors.
2. Ease the classification and filing of cases more easily.
3. Raise the level of accuracy and security efficiency to preserve electronic documents.
4. Reducing approvals between litigants in financial cases.
5. Documenting all the defences and requests in the proceedings electronically without the need for a court clerk.
6. Stop wasting time and making excuses by opponents and procrastinating.
7. Ease of examining issues via the electronic system.
8. Avoiding the defects of handwriting on paper documents due to the presence of electronic copies.

9. The litigants are satisfied with what has been testified, considering that it was recorded electronically.
10. Facilitating the work of the judge in terms of searching for all electronic legal requests and defences.
11. Ease of obtaining information through the electronic file of the claims.
12. Reducing transportation costs to and from the court.
13. Ease of access to information between the parties to the case.
14. Reducing the possibility of error, confusion, and ambiguity in transactions.
15. Maintaining privacy and security in communications through the exchange of data which is superior to that available through phone calls.

## **The Applications of the Electronic Judiciary in Jordan**

The Jordanian Ministry of Justice has established the judicial electronic service website which includes an electronic litigation portal. This portal facilitates access to the judicial organization in Jordan, and the most important service in this regard is the electronic discovery services which provide several services including the inquiry about all judicial transactions, any information related to all kinds of proceedings that are brought before the courts in Jordan and the schedule of hearings according to the specified date, which provided the parties to the case and their agents to obtain the required information in the shortest possible time and without moving to the court building. Regarding the fees of cases, this portal also provides a fee calculator service to calculate the fees specified for all kinds of cases in addition to the fees of the transactions.

Regarding this issue, Article (6) of the system for the use of electronic messages in civil judicial procedures, stipulates that (The Ministry shall provide each attorney with an electronic account on its electronic portal that is approved to register judicial and executive cases, requests, and depositing regulations, data, and all correspondence, and judicial and executive papers).

No one can deny the vast effort of the Jordanian Ministry of Justice as, through its website (<http://www.mog.gov.jo>), it has moved to a semi-comprehensive system for electronic litigation which is the provision of public and lawyer search-inquiries service. This service allows the public to inquire about their lawsuits by searching the case number and its territorial jurisdiction. Citizens, companies, institutions, and lawyers can also access many details regarding their lawsuits, including the date of the next session, the last session, and the reasons for postponing the next session. In addition to the claim classification.

This electronic portal enables lawyers to inquire about cases and requests by name and national number if he is an agent in these cases through a username and password that is provided to them when registering through the site. The lawyer will also be able to view the attachments of the documented case, including the session records and the latest measures taken on the executive case.

To be able to use this online service, the lawyer must update his information in the Bar Association, especially the e-mail address, which in turn provides the Ministry of Justice with it. Regarding the login procedures, the lawyer shall make an account on the Ministry of Justice website by entering his full name, his union number of the Bar Association, and his email address approved by the Bar or his cell phone number, and then the system sends the username and password via the approved e-mail. After accessing this service, he can inquire about his lawsuits, register cases, and requests electronically, and paying the specified fees. This service is not limited to legal cases, requests, and a procedure related to executive cases, but also extends to include a criminal and administrative lawsuit.



## CONCLUSION

This study sheds light on the most significant and prominent developments witnessed by countries in the scope of the use of electronic means, which is reflected positively in the emergence of the electronic judicial system that facilitates litigation procedures for the judicial system in general and the disputed parties. Regarding its benefits, it facilitated the procedures of collecting and preserving judicial papers in one hand, and on the other hand, the number of hard copies has lessened. Moreover, this service has allowed judges to consider and decide cases considering the speed and ease of communication and the possibility of sending documents and documents between the parties, which helps reduce the accumulation of cases and avoid prolonging the litigation period.

This study examined the transition to electronic litigation as a mechanism to activate the electronic court in Jordan, where the nature of electronic litigation, its characteristics, and the legal and technical means necessary to implement it were explained. In addition to the procedures for filing a case before the electronic judiciary, through the application of the legal texts in force in both the Jordanian Code of Civil Procedure and the Jordanian Code of Criminal Procedure. The Law on the Use of Electronic Means in Civil Judicial Procedures No. (95) of 2018, and the System of Modern Technology Means in Criminal Procedures No. (96) of 2018 (Law, 2018; Legislation, 1961). In conclusion, we reached a set of results and recommendations which are as follows:

## RESULTS

1. The electronic judicial system aims to overcome the administrative obstacles facing the judicial system to achieve a comprehensive application of electronic litigation.
2. The Jordanian legislature, under the Code of Civil Procedure, the Code of Criminal Procedure, and the whole system for the use of electronic means in civil judicial procedures No 5-003 of 2018 and the system of modern technology means in air procedures No 5-003 of 2018, has regulated all the judicial procedures that are represented in the Regulations Cases, pleadings, judicial notifications, and court decisions.
3. The formal procedures for litigation in the Jordanian judicial system do not constitute an obstacle to resorting to electronic means to implement these procedures.
4. The characteristics of the electronic judicial system do not affect the principle of the rule of law and the guarantee of justice enjoyed by the regular judiciary.

## RECOMMENDATIONS

This study came out with a set of recommendations which are as follows:

1. The Jordanian legislator reconsiders the Electronic Transactions Law regarding the amendment of Article (3) thereof by deleting the sixth clause of the second paragraph of this article relating to the exclusion of the electronic transactions system works on the lawsuits and pleadings regulations, judicial notification notices, and court decisions, as it is no longer necessary to have The system due to the existence of a legal text that violates it in the Code of Civil Procedure.
2. Preparing the basic infrastructure for courts to prepare all their material and human requirements to become compatible with the application of the electronic justice system.
3. Developing the information system for the judicial authority database according to the latest modern programming systems and computerizing all the administrative departments in the courts and linking them together so that we reach a comprehensive application of the electronic litigation system.
4. Establishing a protection system that ensures the security and confidentiality of the information and

- subsequently guarantees documents and data related to the case file.
5. Preparing the human cadres in the judicial facility, including judges and employees, lawyers, in cooperation with the Bar Association, to employ the means of technology in the procedures of electronic litigation.
  6. Amending the Penal Code to tighten up the penalties for cybercrimes in the field of electronic litigation to achieve greater criminal protection.

## REFERENCES

- Al-Kaabi, H., & Al-Karawi, N. (2016). The concept of remote litigation and its requirements. *Investigative Journal of Legal and Political Sciences*, 8(1), 277-342.
- Al-Manzalawi, S. (2007). *The law applicable to electronic commerce contracts*. New University Publishing House, Alexandria.
- Al-Sharaa, H.M. (2010). *Electronic litigation, and electronic courts*. House of Culture, Jordan.
- Bakr, E.A. (2015). *The role of scientific technologies in the evolution of decades*. Dar Al-Kutub Al-Ilmiyya, Beirut, Lebanon.
- Law. (2015). *Electronic transactions law no. 15*.
- Law. (2017). *Jordanian Evidence Law No. 22*.
- Law. (2018). *The system of modern technology in criminal procedures No. 96*.
- Law. (2018). *The system of using electronic means and modern judicial procedures No. 95*.
- Legislation. (1961). *Code of criminal procedure no. 9*.
- Legislation. (1988). *Code of civil procedure no. 24*.
- Shdeifat, S.M. (2015). Remote investigation and criminal trial via video conference, *Studies, Sharia and Law Sciences. Deanship of Scientific Research, University of Jordan*, 41(1), 353-412.