



The Impact of Intelligent Systems on the Future of Criminal Justice: Between the Right to Privacy and the Imperative of Modernization

Belbagui Boumediene 

*PhD in Law, Senior Lecturer A
University Center of Maghnia, Algeria*

 b.belbagui@cu-maghnia.dz

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ABSTRACT

Constitutional principles have enshrined individual rights in accordance with the guarantees imposed by the rules of a fair trial. However, modern judicial systems are increasingly incorporating technologies driven by artificial intelligence (AI), which has sparked considerable debate. Some argue that the absolute implementation of such technologies poses a serious threat to fundamental constitutional rights—particularly the right to privacy and the guarantees of due process. Others view their adoption as a transformative development in the justice sector.

Among the key outcomes of AI integration into the justice system is the emergence of electronic litigation technologies, notably remote or virtual trials. While these mechanisms have significantly expedited judicial proceedings—especially by resolving disputes more quickly and reducing trial delays—they have also faced criticism. Objections have been raised at both national and international levels due to the potential challenges these mechanisms may present, especially in terms of their impact on fundamental procedural guarantees, such as the principle of adversarial proceedings and the right to a defense.

INTRODUCTION

Constitutional principles have been emphasized at both the international and national levels, historically and in modern times, on the rights of individuals to seek redress through judicial processes safeguarded by the rules of efficient and fair justice. However, modern judicial systems are now witnessing the introduction of technologies driven by artificial intelligence, which has sparked controversy between opponents and proponents. Critics argue that the unrestricted application of such technologies constitutes a violation of fundamental constitutional rights of individuals, whether during the pre-trial phase, particularly the right to privacy, or during the trial itself, especially when proceedings are conducted remotely via video, raising concerns about the extent to which fair trial guarantees are upheld. Conversely, supporters see the adoption of these technologies as a qualitative leap forward for the justice sector, elevating its systems to align with the most advanced judicial frameworks worldwide in delivering justice.

Moreover, the inevitability of artificial intelligence has cast its influence across all sectors amid the rise of what is now known as digital administration or e-governance. Among its manifestations within the justice sector is the mechanism of electronic litigation. The mechanism of electronic litigation, which constitutes one of the newly introduced instruments at the international level, has also been adopted by many countries, including Algeria, in recent years following the enactment of Law No. 15-03 dated February 1, 2015, concerning the modernization of the judiciary. This law institutionalized the use of electronic means as a method for conducting remote litigation procedures. This mechanism has significantly accelerated litigation processes, particularly in expediting dispute resolution.

However, certain jurists and courts have expressed opposition to this mechanism, arguing that it may encounter significant challenges, particularly in guaranteeing essential procedur-

al safeguards and in upholding the core principles of due process, notably the principle of in-person hearings and respect for the right of defense.

The significance of this topic lies in examining the legal dimension regarding the necessity of implementing artificial intelligence technologies in the judicial field in a manner that does not infringe upon individuals' constitutional rights, primarily the right to privacy and fundamental procedural safeguards in litigation.

Moreover, this study aims to clarify the impact of AI systems on the right to digital privacy, particularly during the pre-trial phase, namely the investigation stage, as well as on constitutional rights throughout electronic trial proceedings.

Accordingly, the question arises: **To what extent have AI systems succeeded in balancing an individual's right to privacy and procedural guarantees on one hand, and the demands imposed by the modernization of justice on the other?**

In response, we adopted two main methodologies: the descriptive approach, considering AI systems as a phenomenon requiring a detailed description of their key characteristics and legal framework to identify their advantages and disadvantages; and the analytical approach, which involves scrutinizing the relevant legislative texts regulating the application mechanisms of AI tools, aiming to assess their effectiveness in the judicial domain and their compliance with the protection of individual privacy.

To achieve the objectives of this study, the research paper is divided into two main sections:

- The impact of intelligent systems on the right to privacy;
- The impact of intelligent systems on the constitutional principles protecting litigants (In the French and Algerian experiences).

1. THE IMPACT OF INTELLIGENT SYSTEMS ON THE RIGHT TO PRIVACY

Despite the positive outcomes that can arise from the digitalization of administration in general, most notably the enhancement of public services and the acceleration of fulfilling individuals' needs, this process simultaneously generates a range of challenges. Among these is the issue commonly referred to as the right to privacy, which has evolved into what is now known as digital privacy. Therefore, this section will first address the general concept of privacy before discussing the legal safeguards designed to protect the right to digital privacy.

1.1 The concept of the right to privacy

Privacy, in general, refers to an individual's right to protect their personal information and to secure their life and private affairs from any form of intrusion, violation, or exploitation by others. Disclosing aspects of private life without consent is generally regarded as a violation of the right to privacy.¹ One manifestation of this right is the protection of an individual's personal life from violations such as intrusion into the sanctity of their home.

While traditionally this concept was limited to safeguarding an individual's private life from interference, its scope has expanded alongside advancements in information and communication technologies, particularly with the emergence of artificial intelligence technologies. Today, individuals' lives and all related information and data are integrally embedded within complex information systems and digitized platforms, as opposed to being confined to physical, paper-based records. Consequent-

ly, the right to privacy has evolved into what is now known as digital privacy, which primarily concerns the protection of data generated or transmitted by users during web browsing via mobile devices or desktops.²

Digital privacy can be defined as the ability of an individual to control the collection, processing, storage, and dissemination of personal information in cyberspace, and to be protected against unlawful access, surveillance, or misuse of such data.³ Modern legal scholarship highlights that digital privacy goes beyond safeguarding against intrusion; it reflects broader principles of transparency, accountability, and fairness in data processing.⁴ In addition, comparative legal research demonstrates a progressive recognition of digital privacy as an autonomous right, one that imposes positive obligations on states and institutions to establish effective technical and regulatory safeguards.⁵

1.2 Legal safeguards for the protection of digital privacy

Below, we examine aspects of the legislative frameworks established by the Algerian legislator to safeguard digital privacy, followed by an analysis of the impact of investigation and inquiry into crimes on the right to digital privacy.

1 Saidani, N. (2021). Criminal protection of the right to privacy in the field of informatics. Doctoral dissertation, University of Batna 1, p. 14. Available at: <https://dspace.univ-batna.dz/items/fe9fbddb-ee56-4c1e-b68f-36ab7b404b58>.

2 Al-Sharif, Y., Mizghish, A. (2022). Legal mechanisms established to protect the right to digital privacy in Algerian legislation. *Journal of Research and Business Law*, 7(2), pp. 192-213. Available at: <https://asjp.cerist.dz/en/article/192238>.

3 Finck, M., Pallas, F. (2021). They who must not be identified—Distinguishing personal from non-personal data under the GDPR. *Computer Law & Security Review*, 40, 105523. p. 3. Available at: <https://doi.org/10.1016/j.clsr.2020.105523>.

4 Edwards, L., Veale, M. (2022). Slave to the algorithm? Why a "right to explanation" is probably not the remedy you are looking for. *International Data Privacy Law*, 12(1), p. 77. Available at: <https://doi.org/10.1093/idpl/ipab020>.

5 De Gregorio, G. (2022). Digital Constitutionalism and Privacy and Data Protection. In G. De Gregorio (Ed.), *Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society* (p. 216). Cambridge University Press, Cambridge, p. 216. Available at: <https://doi.org/10.1017/9781009071215>.

1.2.1 Selected legislative frameworks for protecting digital privacy

Successive constitutions have enshrined the protection of the right to privacy, the most recent being the 2020⁶ constitutional amendment. Article 47 states: “The protection of natural persons in the processing of personal data is a fundamental right”.

This right has also been reinforced through various specific laws. For instance, Article 59 of the Postal and Telecommunications Law mandates that:⁷ “Operators holding licenses, as well as their users, under the penalties outlined in Article 127 of this law, must respect the confidentiality of correspondence transmitted via wired and wireless communications, and uphold the conditions for protecting private life and the personal information of subscribers”.

Additionally, Article 15 of Law No. 06-01 concerning the prevention and combating of corruption specifies,⁸ in the context of preventive measures against corruption: “Enabling the media and the public to access information related to corruption, while respecting privacy, personal honor and dignity, as well as the provisions related to national security, public order, and judicial neutrality”.

1.2.2 The impact of investigation and inquiry into crimes on the right to digital privacy:

One of the key legal protections of the right to privacy acknowledged by the legislator involves the limitations imposed even when certain crimes specified below occur. These lim-

itations consist of two substantive conditions: first, the necessity of investigation in flagrante delicto crimes; second, the requirement of a preliminary investigation for crimes of a serious criminal nature. In addition to these substantive conditions, there is a procedural requirement, which is judicial authorization.

A. The necessity of conducting investigations into caught-in-the-act offenses and preliminary inquiries into high-risk crimes

Article 65 bis 5 of the Criminal Procedure Code addresses certain crimes that require immediate investigative and investigative actions due to their high criminal risk.⁹ Examples include drug-related offenses, terrorism, transnational organized crime, offenses affecting automated data processing systems, and money laundering and currency crimes.

When the necessity outlined in the article is established, authorization may be granted to initiate investigative procedures, which include intercepting correspondence, recording audio and video communications, and entering residential premises without requiring the consent or approval of the individuals involved.

B. Judicial authorization

The mere necessity to initiate electronic surveillance, investigation, and monitoring procedures, even in cases involving offenses listed under Article 65 bis 5, is insufficient. It is imperative to obtain judicial authorization from the Public Prosecutor. Furthermore, when a judicial investigation is opened concerning these procedures, authorization must be secured from the investigating judge. These powers granted to the latter were established through the amendment to the Code of Criminal Procedure under Law No. 06-22.¹⁰

6 Presidential Decree No. 20-442 promulgating the constitutional amendment approved by referendum on November 1, 2020. (December 30, 2020). Official Gazette 82. Available at: <https://www.joradp.dz/FTP/JO-FRANCAIS/2020/F2020082.pdf>.

7 Law No. 2000-03 on the general rules relating to postal and telecommunications services. (August 5, 2000). Official Gazette 48. Available at: <https://www.joradp.dz/FTP/jo-arabe/2000/A2000048.pdf>.

8 Law No. 06-01 on the prevention and fight against corruption. (February 20, 2006). Official Gazette 14. Available at: <https://www.joradp.dz/FTP/JO-ARABE/2006/A2006014.pdf>.

9 Ordinance No. 15-02 amending and supplementing Ordinance No. 66-155 of 8 June 1966 (Code of Criminal Procedure). (July 23, 2015). Official Gazette 40. Available at: <https://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015040.pdf>.

10 Law No. 06-22 amending and supplementing Ordinance No. 66-155 of 8 June 1966 (Code of Criminal Procedure). (December 20, 2006). Official Gazette

2. THE IMPACT OF INTELLIGENT SYSTEMS ON CONSTITUTIONAL PRINCIPLES IN LITIGATION

Intelligent systems have not only affected individuals' lives by digitizing their data and privacy but have also extended to their judicial rights, placing these rights at the center of a dispute between opponents and proponents, for reasons we will outline. With Reference to the French Experience in Comparison to the Algerian Experience:

2.1 The nature of remote electronic litigation

Some define the electronic judicial system as: "The authority of a specialized judicial court to electronically adjudicate disputes presented before it via the Internet or a private external communication network (Extranet), using technical electronic mechanisms aimed at expediting dispute resolution and facilitating access for the parties involved"¹¹. Accordingly, litigation procedures occur simultaneously despite the physical distance between the parties¹², allowing for the hearing of testimonies, the exchange of pleadings between the parties or their representatives, and the examination of witnesses or interrogation of the defendants.¹³

From this definition, it is clear that electronic litigation procedures are conducted through the transmission and receipt of documents and evi-

dence via electronic platforms, eliminating the need for the parties to physically appear repeatedly at the courthouse, as traditionally required in conventional judicial systems. Opponents are also interrogated, their statements are heard, memoranda are exchanged between them or their representatives, and witness statements are heard, all via electronic means.¹⁴ After that, the judge then only needs to ask a few straightforward questions before issuing a ruling promptly, without the need to postpone due to case backlog.

This contributes to saving time, reducing effort, and minimizing expenses, thereby alleviating the issue of overcrowding in courts and striving to improve the quality of services provided to litigants.¹⁵

2.2 The legislative foundations of electronic litigation in Algeria

Electronic litigation, or remote video conferencing, which the Algerian legislator refers to using the French term "Vidéo-conférence" in the context of investigations and witness hearings, derives its terminology from the United Nations Convention against Transnational Organized Crime, ratified by Presidential Decree No. 02-55 issued in 2002.¹⁶ However, its practical application only began to emerge in 2007, specifically with the inauguration of the 2007-2008 judicial year, when the electronic litigation bill was introduced for parliamentary discussion. The bill received implicit approval from parliament members, but further debate was postponed until 2014, during the nineteenth public session held on Monday, November 24, 2014. These developments ultimately culminated in the enactment of Law No. 15-03 concerning the modernization of justice.¹⁷

84. Available at: <https://www.joradp.dz/FTP/jo-ara-be/2006/A2006084.pdf>.

11. Jayyashi, A. F. M. (2014). Remote litigation: A legal study. *Kufa Journal of Legal and Political Sciences*, 1(21), pp. 100-129. Available at: <https://journal.uokufa.edu.iq/index.php/kjlp/article/view/9644>.

12. Osmani, L. (2016). The electronic litigation system as a mechanism for achieving development plans. *Elmofaker Review*, 11(1), pp. 215-225. Available at: <https://asjp.cerist.dz/en/article/62437>.

13. Mahmoud, S. A. (2007). The role of the computer in front of the Egyptian and Kuwaiti judiciary: Towards judicial e-process and electronic judiciary. *Dar al-Nahda al-Arabiya*, Cairo, p. 30.

14. Mahmoud, op. cit., p. 30.

15. Osmani, op. cit., p. 218.

16. Presidential Decree No. 02-55 ratifying, with reservation, the United Nations Convention against Transnational Organized Crime. (February 5, 2002). *Official Gazette*, No. 9. Available at: <https://www.joradp.dz/FTP/JO-FRANCAIS/2002/F2002009.pdf>.

17. Law No. 15-03 on the modernization of the justice

Although this law represents a modest and somewhat delayed step, considering the timeline from the ratification of the United Nations Convention against Transnational Organized Crime,¹⁸ it can nonetheless be regarded as a positive advancement towards embracing technology, specifically what has come to be known as the electronic administration system.

Article 1 of this law articulates three fundamental objectives it aims to achieve:

- Establishing a centralized information system for the Ministry of Justice;
- Transmitting judicial documents and records electronically;
- Utilizing remote video conferencing technology in judicial proceedings.

2.2.1 Applications of electronic litigation in Algeria

Since the enactment of the Justice Modernization Law, the majority of courts across the country have seen significant uptake in utilizing its provisions, with 153 remote video trials recorded within the first year of implementation. The inaugural session took place on October 7, 2015, at the Court of El Kalaa in the misdemeanor division. Officials involved in this initiative emphasized that this technology aims to alleviate courtroom overcrowding, reduce the burden of travel for defendants, security personnel, prison administrations, and witnesses, while also accelerating the pace of case processing.¹⁹

Regarding remote international trials, it was the first of these pleadings on July 11, 2016, between the Court of Msila in Algeria and the Court of Nanterre in France. Many legal scholars and attorneys who participated in these remote hearings praised the process for its numerous advantages,

including the provision of simultaneous interpretation from Arabic to French, and for projecting a positive image internationally regarding the integrity of the Algerian judiciary, highlighting respect for the right of defense and adherence to fundamental trial principles. Furthermore, this form of trial eliminates the need for physical presence in court, especially for individuals unable to travel due to health conditions. Overall, the use of remote video trial technology offers significant savings in effort, cost, and time.²⁰

2.2.2 The position of legal doctrine and judicial practice on the digitalization of justice

An examination of the implementation of justice digitalization laws and their impact on various international judicial systems, as well as the reactions they have provoked, reveals the existence of two opposing trends. The first trend expresses satisfaction, relying on the advantages demonstrated through judicial practices conducted via electronic platforms. The second trend, however, is not entirely opposed to these technologies but raises reservations concerning certain aspects, particularly those touching upon the fundamental principles of due process.²¹

In order to assess the legal value and broader implications of these laws, it is necessary to analyze the arguments and justifications advanced by both positions, with the aim of reaching practical outcomes that may contribute to the harmonization of diverse legal and judicial systems at the international level.

A. Perspectives of the supportive approach to judicial digitalization

- This perspective is grounded in the principle of synchronizing technological ad-

sector. (February 1, 2015). Official Gazette 6. Available at: <https://www.joradp.dz/FTP/JO-ARABE/2015/A2015006.pdf>.

18 notably since the issuance of Presidential Decree No. 02-55 in 2002, its discussion in 2007, and its eventual enactment in 2014.

19 Radio Algeria. (October 8, 2015). Conducting the first remote visual trial at Kolea Court. Radio Algeria. Available at: <https://radioalgerie.dz/news/ar/article/20151008/54527.html>.

20 Echorouk Online. (July 11, 2016). Hearing of a French witness in the first remote trial in the history of Algerian justice. Echorouk Online Newspaper. Available at: <https://www.echoroukonline.com/دعاش-علمس-ع-ب-ن-ع-م-ك-ا-ج-م-ل-و-أ-ي-س-ن-ر-ف/>.

21 Selçuk, S., Konca, N. K., Kaya, S. (2025). *AI-driven civil litigation: Navigating the right to a fair trial*. *Computer Law & Security Review*, 57, p. 106136. Available at: <https://doi.org/10.1016/j.clsr.2025.106136>.

vancement with the evolution of crime. Since offenders have developed sophisticated technical methods relying on electronic means to commit crimes, it is only logical to respond by updating laws and electronic tools to counter this phenomenon effectively.²²

- The rapid completion and execution of litigation procedures through the electronic exchange of pleadings and documents, unlike traditional correspondence and postal communications,²³ which often result in case adjournments, thus fulfilling the principle of procedural economy.
- Empirical evidence suggests that the adoption of electronic litigation and digital case management systems has led to a tangible reduction in court backlogs and a decrease in the frequency of adjournments. For instance, in England and Wales, the shift from paper-based to digital processes in criminal and family courts has resulted in improved accuracy—error rates dropping below 1%—expedited case progression, and fewer delays caused by clerical inefficiencies.²⁴
- Facilitating the categorization of cases which streamlines their processing and automated storage while reducing

the physical storage space required in courts. This also helps prevent the loss or haphazard filing of case files.

- Preserving electronic documents of all kinds from the initial complaint, records, session minutes, to all case-related papers, thereby ensuring the protection of rights.
- Alleviating the pressure and workload on judges and sparing them from confrontations with litigants, particularly in cases where judges personally oversee proceedings without legal representation.
- Allowing electronic access to case files and enabling review of all procedures taken without the necessity of physically attending court.²⁵

B. The viewpoints of those opposing electronic litigation, on the grounds that it conflicts with constitutional principles

At the international level, the attitude towards remote litigation between countries appears to oscillate between relative rejection and conditional acceptance. There is no dispute that digitization and artificial intelligence have contributed to the development of the judicial system. However, studies have shown that the lack of technology in some judicial systems in some countries has negatively impacted the effectiveness of digital justice, while other systems have adapted well.²⁶

We will limit our analysis to the French model in comparison with the Algerian experience, in consideration of the scope of this research paper:

One of the most notable recent decisions of the French Constitutional Council²⁷ provided

- 22 Al-Badaynah, D. M. (September 2-4, 2014). Cyber-crimes: Concept and causes. Paper presented at the Scientific Symposium "Emerging Crimes in Light of Regional and International Changes", College of Strategic Sciences, Amman, Jordan, p. 6. Available at: https://www.researchgate.net/profile/Diab-Al-Badayneh/publication/328064682_aljraym_alalktrwnyt_almfhw_m_walasbab/links/5bb5be4392851ca9ed37abf3/al-jraym-alalktrwnyt-almfhw_m-walasbab.pdf.
- 23 Al-Zahrani, N. S. (October 15, 2008). The electronic court in the information technology era. Al-Riyadh Newspaper. Available at: <https://www.alriyadh.com/380971>.
- 24 Bhatt, H., Bahuguna, R., Swami, S., Singh, R., Gehlot, A., Akram, S. V., Gupta, L. R., Thakur, A. K., Priyadarshi, N., Twala, B. (2024). Integrating industry 4.0 technologies for the administration of courts and justice dispensation – a systematic review. *Humanities and Social Sciences Communications*, 11(1), Article 1076, p. 15. Available at: <https://doi.org/10.1057/s41599-024-03587-0>.

- 25 Utani, S. (2012). The electronic court: Concept and application. *Damascus University Journal for Economic and Legal Sciences*, 28(1), pp. 165-208. Available at: <https://www.damascusuniversity.edu.sy/mag/law/images/stories/1-2012/a/165-208.pdf>.
- 26 Gaffar, H. (2024). Implications of Digitalization and AI in the Justice System: A Glance at the Socio-legal Angle, *Law and World*, vol. 10, no. 31: 154. Available at: <https://lawandworld.ge/index.php/law/article/view/585>.
- 27 Decision No. 2020-872 QPC of the French Con-

that: “While technological progress necessitates the digitization of courts and trials, this must not come at the expense of the right to physical presence and the right to respond during the various stages of the trial. While this may not affect the judicial panel, it is fundamentally different for the accused and their defense”.

This ruling followed the legislative measures adopted by the French Parliament in response to the COVID-19 pandemic, which resulted in a considerable expansion of remote trial hearings through video conferencing technologies. The practice provoked substantial debate, particularly after the French Constitutional Council, on 16 October 2020, was seized of a decision delivered by the Criminal Division of the Court of Cassation.²⁸ The ruling of the French Council of State (Conseil d’État), Judgment No. 2351 of 13 October 2020, concerned a constitutional matter regarding the protection of rights and freedoms guaranteed by Article 5 of Ordinance No. 2020-303, which amended the Code of Criminal Procedure in response to the COVID-19 pandemic on the basis of Law No. 2020-290 adopted to address the spread of COVID-19.²⁹

Article 5 of the aforementioned Ordinance No. 2020-303 provides that: “By way of *derogation from Article 706-71 of the Code of Criminal Procedure, audiovisual communication may be used before all criminal courts, with the exception of the Cour d’assises, without the need to obtain the consent of the parties... while respecting the rights of the defense and ensuring the adversarial principle in the proceedings*”.

In this regard, the French Constitutional

Council issued two consecutive decisions. The first was rendered on January 15, 2021 (*Decision No. 2020-872 QPC*), in which the Council ruled against the legitimacy of using audiovisual communication technology in criminal proceedings without the consent of both parties, as provided for in Article 5, even in the context of the health emergency. The Council held that the substance of this measure “undermines the rights of the defense”, particularly the right of the accused to be physically present before the judge.³⁰

In its second decision, issued on 4 June 2021 (*2021-911/919 QPC*), the French Constitutional Council reaffirmed the same position, emphasizing that the use of videoconferencing in criminal proceedings without the defendant’s consent undermines the right to physical confrontation, particularly during pre-trial detention. The Council therefore rejected the request to remove the requirement of the defendant’s consent for trial by video in detention cases, considering that such a measure could deprive the defendant of appearing before a judge. This, according to the Council, constitutes an infringement of defense rights that cannot be justified by the health emergency context, despite acknowledging the importance of protecting public health and ensuring the continuity of justice.³¹

Indeed, the Constitutional Council declared the first paragraph of Article 5 of the aforementioned Ordinance No. 2020-303 unconstitutional.³²

stitutional Council. (January 15, 2021). Available at: <https://www.legifrance.gouv.fr/jorf/id/JORF-TEXT000042993586>.

28 Judgment No. 2351: *Use of videoconferencing before criminal courts in the context of the state of health emergency*. (October 13, 2020). Conseil d’État (France). Légifrance. Available at: <https://www.legifrance.gouv.fr>.

29 Ordinance No. 2020-303 of 25 March 2020 adapting the criminal procedure rules under the Emergency Law No. 2020-290 of 23 March 2020. (March 26, 2020). *Official Journal of the French Republic*, JORF No. 0074, p. 5809. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041755529>.

30 Décision n° 2020-872 QPC. (January 15, 2021). Invalidating video hearings without consent as violating rights of defense. Constitutional Council. Available at: <https://www.conseil-constitutionnel.fr/decision/2021/2020872QPC.htm>.

31 Décision n° 2021-911/919 QPC (June 4, 2021). Censuring unrestricted use of videoconferencing without legal safeguards. Constitutional Council. Available at: https://www.conseil-constitutionnel.fr/decision/2021/2021911_919QPC.htm.

32 Al-Qadi, R. M. (2022). *Comment on the Decision of the French Constitutional Council on the Unconstitutionality of the Use of Audio-Visual Communication before the Criminal Judiciary in the Context of a State of Health Necessity*. *Journal of Legal and Economic Research*, Faculty of Law, Mansoura University, 12 (79),

An analysis of these two decisions reveals that the Constitutional Council does not reject digitization per se, but rather requires clear safeguards and conditions to ensure respect for the rights of the defense and the legitimacy of proceedings. It reflects a delicate constitutional balance between the protection of litigants' fundamental rights and the flexibility of the judicial system in times of crises such as the COVID-19 pandemic. On the one hand, it allows the use of video trial technologies, but only within a narrow and temporary scope, linked to the circumstance of the 'health emergency', rather than as a permanent generalization, while observing defense guarantees in particular: legal representation and the defendant's consent to video hearings, especially in cases of pre-trial detention.

After this analytical presentation of the decision of the French Constitutional Council, it is particularly important to highlight the most recent studies that have addressed the management of procedures in France, including the applicable technical and legal standards as well as their practical outcomes:

The ELI-Mount report emphasizes that remote trials must respect the European standards for judicial independence, ensuring that geographical, economic, and procedural factors do not hinder access to justice. The report recommends that all countries, including France, adopt technical and legal safeguards for remote hearings. These safeguards include secure communication channels, verification of participants' identity, and measures to prevent technological bias or interference. The report also highlights that training of judicial personnel and continuous monitoring of the effectiveness of remote hearings are essential to maintain fairness and public trust in the judicial system.³³

p. 177 ff. Available at: https://mjle.journals.ekb.eg/article_235640.html?lang=en.

33 ELI-Mount. (2023). European standards of judicial independence. Institut Européen du Droit, pp. 12-15. Available at: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI-Mount_Scopus_European_Standards_of_Judicial_Independence.pdf.

The aforementioned principles have been reinforced by Article 706-71 of the French Code of Criminal Procedure,³⁴ as well as by the French Code of Civil Procedure,³⁵ particularly through its relevant provisions Articles 748-1 to 748-9, which set forth requirements to ensure parties' identity, the integrity and confidentiality of exchanged files, and the extension of procedural deadlines to mitigate technical risks. One of the main tools employed is the Lawyers' Private Virtual Network (RPVA), which allows attorneys to submit documents electronically and communicate directly with courts, thus accelerating procedures and reducing the need for physical appearances.³⁶

Technologies such as artificial intelligence (AI) and data analytics are increasingly used to improve the effectiveness of e-litigation. For instance, natural language processing (NLP) techniques have been applied to extract legal indicators from court judgments, helping reduce information asymmetry between parties and enhancing access to justice.³⁷

All of these studies suggest that remote litigation may affect the dynamics of courtroom interactions, which calls for the development of new protocols to ensure procedural effectiveness and protect the rights of the parties involved.³⁸

34 French Code of Criminal Procedure, Articles 706-71. Légifrance. Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000051751938.

35 French Code of Civil Procedure. (2024). Légifrance. Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716/.

36 CMS. (n.d.). CMS Expert Guide to Digital Litigation in France. Available at: https://cms.law/en/int/expert-guides/cms-expert-guide-to-digital-litigation/france?utm_source=chatgpt.com.

37 Boniol, P., Panagopoulos, G., Xypolopoulos, C., El Hamdani, R., Restrepo Amariles, D., Vazirgiannis, M. (2020). Performance in the Courtroom: Automated Processing and Visualization of Appeal Court Decisions in France, p. 1. Available at: <https://arxiv.org/pdf/2006.06251>.

38 European Law Institute. (2024). European standards of judicial independence. Institut Européen du Droit, pp. 1-62. Available at: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI-Mount_Scopus_European_Standards_of_Judicial_Independence.pdf.

In Algeria, some legal professionals have expressed objections to electronic litigation for the following reasons:³⁹

- It allows for the remote trial of defendants who are fugitives abroad, particularly in countries that lack extradition agreements with Algeria, thereby enabling such defendants to remain free and avoid punishment;
- Although the use of video sessions is a promising tool to mitigate the issue of trial postponements, trying defendants through this technology conflicts with the procedural system currently practiced before the courts;
- Moreover, this approach infringes upon defense rights and undermines fundamental litigation principles. This is because existing legislation assumes the principle of public hearings and trials, as well as the mandatory presence of the defendant during the session. Without the defendant's presence, the defense is deprived of the right to advocate, which could lead to significant legal complications under this system.

2.3 An assessment of the digitalization of justice and the extent to which it upholds the fundamental principles of litigation

2.3.1 The Advantages of Judicial Digitalization

- In our assessment, the adoption of remote litigation technology has the potential to provide substantial procedural safeguards related to the proper administration of justice, provided it is implemented in a manner consistent with the spirit of the law and guarantees the par-

ties' rights to a fair trial.

- Regarding documentation, evidence, electronic preservation and notification, as well as access to case files via the court's website, we believe that replacing traditional paper-based methods with electronic means does not undermine the fundamental principles of litigation. Rather, it contributes to better documentation of trial procedures, ensures speed, accuracy, and reliability, and introduces greater flexibility to judicial processes compared to classical methods.
- What proves our previous point, Studies have demonstrated that the use of artificial intelligence in criminal cases significantly enhances judicial efficiency while incurring relatively lower costs compared to traditional justice systems.⁴⁰
- Digital platforms, such as the Lawyers' Private Virtual Network (RPVA), allow for the electronic submission of documents and direct communication with courts. This facilitates the acceleration of judicial procedures and reduces the necessity of physical presence in court hearings.⁴¹
- The digitalization of justice enables the online publication of court records, thereby increasing transparency and allowing citizens to monitor judicial proceedings. Nevertheless, it remains essential to strike a balance between digital openness and the protection of privacy.⁴²

39 Boumediene, B. (2021). The law of modernizing justice and its impact on achieving basic principles in litigation: Read in project Law No. 15/03 issued on 01/02/2015 related to modernization of justice. *Journal of Legal and Social Sciences*, 6(4), p. 1261. Available at: <https://asjp.cerist.dz/en/article/170253>.

40 Nouri, Z., Ben Salah, W., & Al Omrane, N. (2024). *Artificial Intelligence and Administrative Justice: An Analysis of Predictive Justice in France*. *Hasanuddin Law Review*, 10(2), p. 119. Available at: <https://doi.org/10.20956/halrev.v10i2.5541>.

41 Singh, M., Upadhyay, S. N. (2024). Digitization of Legal Aid Services and Criminal Justice. *Law and World*, p. 5. Available at: <https://lawandworld.ge/index.php/law/article/view/471>.

42 Allard, T., Béziaud, L., Gambs, S. (2020). Online publication of court records: Circumventing the privacy-transparency trade-off. *arXiv*, p. 2. Available at: <https://arxiv.org/pdf/2007.01688>.

2.3.2 The disadvantages of judicial digitalization:

- Digitalization raises serious concerns regarding the protection of personal data, as digital systems may be vulnerable to breaches or misuse. Strong and effective security measures are therefore indispensable.⁴³
- Algorithms employed in digital justice may contain embedded biases that influence judicial decisions, potentially leading to unjust outcomes. Hence, transparent and fair algorithmic design is necessary to minimize these risks.⁴⁴
- Certain jurisdictions face challenges in adopting modern technology due to limited resources and weak digital infrastructure, which undermines the effectiveness of e-litigation and the broader process of judicial digitalization.⁴⁵
- Although remote video trials have become a necessity driven by technological advancement, the manner in which these trials are conducted does not provide a comprehensive and accurate view of courtroom proceedings in terms of parties, witnesses, and the public. This hinders the realization of the principles of publicity and orality required by a fair trial,⁴⁶ particularly when technical failures occur that prevent communication with the parties and their ability to be questioned remotely.

CONCLUSION

In concluding this discussion, it is important to present some key findings and, correspondingly, propose certain solutions and recommen-

dations, particularly given the challenges facing the new government amid the rapid development of artificial intelligence technologies. The aim is to enhance the effectiveness of the legal framework governing AI applications within the judicial system.

Study Findings:

- The most critical phase in criminal proceedings is the pre-trial stage, during which the legislator has enshrined safeguards to protect the life and privacy of the individual under investigation.
- Even amid investigative and criminal inquiry procedures, the legislator has maintained the protection of individuals' rights to privacy and private life by imposing stringent restrictions on the use of electronic surveillance when necessary.
- It has been established that AI systems exert significant influence both during the pre-trial phase, particularly in crime investigations, which impact the right to digital privacy, and during the electronic trial phase, affecting constitutional guarantees in litigation, especially the principles of the right to defense and the principle of oral proceedings.
- Based on both the French and Algerian experiences, it appears that artificial intelligence systems have had a positive impact in accelerating judicial procedures and reducing financial burdens on litigants, particularly in cases involving parties located in different geographical areas.
- The technical standards applied in this context demonstrate that the digital infrastructure constitutes a decisive factor for the success of remote trials; however, disparities in the technological readiness of courts significantly affect the effectiveness of implementation.
- Furthermore, practical experience shows that procedural safeguards—such as prior consent of the parties, the reliability of au-

43 Allard, op. cit., p. 2.

44 Ibid., p. 2.

45 Allard, op. cit., p. 2.

46 Amarah, A. H. (2018). The use of videoconferencing technique in the investigation and criminal procedures. *Dirāsāt wa Abḥāth: The Arab Journal of Human and Social Sciences*, 10(3), p. 68. Available at: <https://asjp.cerist.dz/en/article/59930>.

dio-visual transmission, and the possibility of appeal—remain a fundamental challenge to ensuring the right to a fair trial.

Study Recommendations:

- Similar to the French and Algerian experiences, states should adopt a comprehensive legislative reform that guarantees full recognition of electronic documents and digitally rendered judgments, while ensuring harmonization between criminal and civil procedural codes;
- There is a critical need for the genuine implementation of artificial intelligence applications, which requires the development of algorithms that ensure a delicate balance between protecting the right to privacy and safeguarding the rights of litigants on one hand, and meeting the demands of judicial modernization on the other;
- All jurisdictions should invest in a unified digital infrastructure, including secure platforms for document exchange and data protection, while also benefiting from successful comparative experiences;
- Mandatory continuous training should be imposed on judges and lawyers in digital technologies to ensure the effective and fair conduct of remote trials;
- Strengthening appeal mechanisms and judicial oversight over electronically issued decisions is essential to guarantee that the rights of defense and constitutional safeguards are not compromised;
- Clear procedural protocols should be developed for the management of virtual hearings, taking into account the dynamics of communication between judges, parties, and witnesses, whether in domestic or international trials.

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