

Electronic judicial notification in a civil lawsuit: Comparative study

By

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Abstract

One of the important and necessary traditional issues in the workplace of the judiciary is the issue of service judicial carried out by cadres who are appointed by the Judicial Council as informant employees in Iraqi courts who carry out the task of effecting service of judicial documents. The notification may be made by an official letter from the court through the reference registered mail or by a telegram to refer in urgent matters by a court decision, or by the police. If this task is not done properly, the court will be unable to conduct a pleading, which leads to the case not being settled, and thus the judiciary will not be able to reach its goals to achieve justice. Therefore, in light of the modern developments and the prosperity of information systems and the spread of the use of modern means of communication in all areas that have become a reality, everything that hinders the resolution of cases can be overcome by employing general rules in Iraqi law and adapting them to work by electronic means to replace human cadres in the field of making service judicial and saving effort. Time, costs, and task completion in the easiest and fastest way, using advanced alternative methods such as e-mail, mobile and fixed telephones without using fax and calcification, which have become part of the past to reach the goals of the judiciary, as they can be productive of the legal effects achieved by traditional means of reporting.

Keywords: comparative study; civil lawsuit; electronic judicial

Introduction

Electronic notification is considered one of the most important stages through which a lawsuit goes through, especially since the situation in Iraqi law and other legislation was devoid of reference to this subject, except for what was included in Article (21) of Federal Court Law No. (30) of 2005, which permitted notification through modern devices, and a deficient view of the Electronic Signature Law No. 78 of 2012, which excluded its applications in the field of the judiciary in accordance with Article 3/1, as well as the means of notification stipulated in the Civil Procedure Law, which increases the substantive and procedural importance of reporting. Especially since the traditional reporting that is practiced by people who are appointed by the Judicial Council, also by means specified by the law, so it is one of the most important procedures in judicial work, as it is a product of its effects when the pleading is conducted at the time specified by the court, and it is also one of the most important factors that confront the judicial process. In the failure to resolve the cases when the correct notifications were not made from those in charge of this judicial task. The traditional service of judicial is the original and one of the most prevalent methods in judicial systems, and sometimes some legal problems arise in terms of how the reporting is conducted and the validity of what is included in the reporting of written data.

Therefore, electronic notification is a legal procedure that is applied using electronic devices and modern means of communication, to overcome problems and advance the burdens

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of this judicial task, to speed up judicial procedures, and to reach its ultimate goal in the shortest and fastest way to reduce time, effort and costs, through the use of scientific technology that has become a part of our life. Technically in our life, we must use it in the reporting process so that the reporting options become multiple instead of limiting them to one option. The question that may arise here is whether electronic notification will produce the legal effects achieved by ordinary reporting, and what are the methods of electronic judicial notification? The answer to these questions requires dividing this research into three topics. In the first section we deal with the definition of electronic judicial notification, its advantages and conditions for its application. In the second we will search for means of electronic judicial notification and we will allocate the third to search for electronic notification procedures and the difficulties facing electronic notification and how to deal with them, and then show the most important results the findings of the research with an explanation of the most important recommendations.

Definition of electronic judicial notification and its advantages

This topic will be divided into two requirements, we will explain in the first requirement the definition of electronic notification, and in the second requirement we explain the most important advantages and conditions for applying electronic judicial notification.

The first requirement

Definition of electronic judicial notification

Before explaining the definition of electronic judicial notification, we must briefly refer to the concept of the ordinary reporting paper that is the original in the law of pleadings, and it is the paper that is issued from the court before which the pleading is filed after the fee is paid and registered in the main record with a serial number for the precedence of submission, in two copies or More one of them is delivered to the person to be notified, and the second is returned to the court to be kept in the lawsuit file after the notification has occurred and whether it is valid or not ⁽¹⁾

As for electronic judicial notification, it is a legal procedure by adopting modern means of reporting not to replace the traditional service of judicial, but rather to assist in the service process in a shorter and faster way to overcome legal disputes over the validity of the service.

Therefore, electronic judicial notification is a modern judicial means and an important legal procedure among the litigation procedures, which is implemented according to the general rules of the law of pleadings according to which the usual reporting procedure is carried out, but the first differs from the second in terms of application tools and means, and this procedure is taken by the court at the request of the litigants Or the clerk's office or based on the court order, and it is performed by the judicial whistleblower and the knowledge is communicated to the person required to be notified, in order to achieve the principle of confrontation, and apply the principle of equality between litigants before the court ⁽²⁾.

The reporting is also required to prove all the data stipulated in Article (16) of the Procedural Law and correspond to it with the same meaning and content Article (9) Egyptian Pleadings ⁽³⁾.

The second requirement

This requirement will be divided into two branches. We will discuss in the first the advantages of electronic judicial notification, and in the second we will deal with the conditions and requirements for its application.

- (1) See: Article (15) of the Procedure Law No. 83 of 1969.
- (2) See: Article (13) Iraqi pleadings, corresponding to Article (6) Egyptian pleadings, and Article (651) French pleadings.
- (3) Article (16) of the Iraqi Procedure Law No. 83 of 1969 stipulates that “the paper to be notified must include the following data: 1- The case number and the day, month and year in which the reporting took place

First branch

Advantages of electronic judicial notification and conditions for its application

The use of modern electronic means from the judicial whistleblower registry in the court or through the judicial clerk’s office that can do the work of the whistleblower and dispense with the reporting office of the whistleblowers specialized in traditional paper reporting, it provides many advantages and guarantees, the most important of which are ^{:(4)}

1. Speed in completing the announcement and not restricting the traditional methods of reporting transmission.
2. Rationalization in human effort and utilization of human resources in other work.
3. Elimination of fraud and manipulation in the failure of the notification to reach the person to be notified.
4. It is facilitated for parties in the places where the law decides to commit the opponent to the necessity of taking a chosen residence for the opponent according to Article (21/4) Iraqi pleadings and corresponding to Article (74/2) Egyptian pleadings.
5. Leaving the paper-based system and using the modern paperless system (electronic writing).

The second branch

Conditions of application of the electronic service of judicial

The Iraqi courts, with the support and attribution of the Supreme Judicial Council, must adopt modern information technology technology in reporting and communications, to reduce time and effort, and to keep pace with the developed countries that have updated their general rules for working with electronic means in the court arena.

The Supreme Judicial Council should proceed with a wider scope than it is now to apply service of judicial via e-mail, although there are some exceptions in the field of the judiciary. However, this idea is welcomed and praised by judges, their assistants and even law enforcement officers who use computer technology, while it is difficult. For those who do not know how to work in this field, therefore it is necessary to prepare the judicial cadres and train them to work in these means, and this includes lawyers who hold an identity card belonging to the Bar Association to be effective, in addition to equipping the courts with all the requirements of electronic work.

Therefore, the Iraqi courts must resort to following the e-mail by conducting services judicial under the direction of the Supreme Judicial Council to reduce a lot of effort and time as well as the human resources appointed for this purpose and benefit from their services in other areas, and then contribute to expediting the settlement of the accumulated cases before the Iraqi courts.

(4)Dr. Youssef Sayed Awad, *The Privacy of the Judiciary Through Electronic Means*, PhD Thesis, Ain Shams University, Cairo, pp. 287 ff.

Regarding the reason for resorting to service's of judicial by e-mail or mobile phone, the fact that this procedure comes within the framework of keeping pace with the technological development of information in the field of communication and technology, as well as keeping pace with the rise of some legislations in updating their laws and adapting the general rules to work by electronic means in the field of the judiciary, similar to the rest of the sectors. Other such education and others. ⁽⁵⁾

It should be noted that work in this field between Iraqi courts is not limited to internal correspondence between them, and to notify persons parties to the case inside Iraq only, but also to inform persons residing outside Iraq through the embassies and consulates of the Ministry of Foreign Affairs, and these procedures are carried out by a letter directed by the Presidency of the Appeal To the Ministry of Foreign Affairs, then the competent authorities in the country in which the person to be notified resides is approached, and after the notification is made, he is returned by the same mechanism, and that coordination and cooperation between the judiciary and the Ministry of Foreign Affairs is good in this area and has not encountered any problem, taking into consideration the legal periods for notification which he specified The Iraqi legislator, according to the procedures law in force, that the period of reporting inside Iraq differs from the period of reporting outside Iraq. ⁽⁶⁾

And the report outside Iraq (international), are not done easily because the role of the Iraqi judiciary is limited only to the borders of the region, and those communications are strictly subject to international relations and need international coordination, bilateral conventions and diplomatic efforts, and from the agreements that Iraq has joined that will facilitate the procedures for communications between countries Including the Riyadh conventions concluded between the Arab countries, according to which the acceding countries were given the authority to make notifications by addressing these countries directly without resorting to embassies. ⁽⁷⁾

It is also necessary to train and develop the competence of police station commissioners working in investigation courts in this work because they lack sufficient information on how to conduct service of judicial electronically, by including them in training courses in coordination with the federal judicial authority. Therefore, in light of the above, if the above conditions and requirements are met, service of judicial can be executed electronically and to leave the traditional methods used by all courts to achieve what the judiciary aims for and settle the cases as soon as possible.

- (5) For consideration in Article (4) of the Regulation on the Use of Electronic Means in the Jordanian Civil Judicial Procedures No. (95) of 2018.
- (6) Refer to Articles (13,14,15) of the effective Iraqi Procedure Law No. (83) of 1969 as amended.
- (7) See Articles (7, 6) of the Riyadh Arab Agreement for Judicial Cooperation of 1983, which Iraq ratified on 3/16/1984.

The second topic

Electronic judicial notification means

The Iraqi Law of Procedure specifies the person who undertakes the task of reporting judicial papers in accordance with the first paragraph of Article (13), and the article permits, as an exception, the notification procedure by a letter issued by the court through registered mail that is referred to in urgent matters by a court decision and in the absence of post offices in the place where the reporting is requested Police officers inform the person to be notified.

After we got acquainted with the people who report and the means by which services of judicial are made according to the law, including the traditional mail, which is stipulated in many legislations, including the law of pleadings, and the aim of it is legal science through the actions of judicial whistleblowers,

The traditional mail is a judicial procedure aimed at achieving legal knowledge by order of the court and through the specialized whistleblowers, creating the same legal effect that reporting through the judicial whistleblower, and given the nature of e-mail and traditional mail, there is a strong convergence in the job that is achieved by both, despite the difference. The mechanism adopted by both systems ⁽⁸⁾

As well as the fundamental differences that distinguish e-mail from regular mail. However, the similarity in the purpose confirms that there is nothing to prevent the use of e-mail as a modern method of technological technical advancement through which to conduct electronic judicial notification ⁽⁹⁾, in addition to other modern means that we will deal with through the research, and accordingly this topic will be divided into Two requests: In the first requirement we shall discuss the subject of notification via e-mail, and in the second requirement we shall discuss notification by means of the mobile and fixed phone.

(8) Dr.Youssef Syed Awad, previous source, p. 284.

(9) Dr.Sayed Ahmed Mahmoud, *The Role of the Computer Before the Egyptian and Kuwaiti Courts*, Dar Al-Nahda Al-Arabiya, Cairo, 2009, pp. 57-60

The first requirement Reporting via email

There is no doubt that the e-mail service is the most used service by Internet users, at the present time compared to the use of fax and telex machines that have become a thing of the past due to the characteristics of e-mail with characteristics that made it the throne of traditional mail means, in terms of speed, accuracy and time so that it can be sent One message to hundreds or thousands of people or departments at the same time and it does not take only a few seconds to send or receive it, provided that the user has the e-mail program on his own computer, as well as the rest of the users, whether they are natural or legal persons who have e-mail addresses of each of them By subscribing to obtain this service from the internet. Therefore, the reporting process by the whistleblower that requires moving to the address to be notified differs in form and content from the reporting process by using modern electronic means, including e-mail, to determine the location by means of the monthly subscription of Google Earth for the electronic service unit, so the citizen or the information lawyer can provide the service unit with the address required to be notified by mediation Satellite images captured by the Google Legacy service or any similar services to it. reporting monitors within the service unit can also ensure that the reporting process takes place and document this process by means of satellite images ⁽¹⁰⁾.

National, Arab and international legislations have been issued recently. Reporting via e-mail is considered a modern method that is added to traditional means of reporting, including but not limited to Federal Supreme Court Law No. (30) of 2005 as Article (21) stipulates that “the Federal Supreme Court may Conducting notifications in its field of competence by means of e-mail, telex and fax, as well as other means of notification stipulated in the Code of Civil Procedure ⁽¹¹⁾.

Therefore, legislative intervention is required to amend Article (1/13) of the Civil Procedure Law, to achieve the possibility of service of judicial via e-mail, as well as other means stipulated in the law, including traditional mail.

As the concept of using the electronic means in service of judicial means the use of electronic means through which one or more parties can communicate with the

- (10) Hazem Al-Sharaa, *Electronic Litigation*, House of Culture for Publishing and Distribution, Amman, 2010, p. 76.
- (11) It was published in Issue 3997 on 5/2/2005 of the Iraqi newspaper Al-Waqi`a.

other through modern technological means, including e-mail as the most recent and fastest technical means used to exchange messages simultaneously between individuals ⁽¹²⁾.

Therefore, e-mail contains several definitions in jurisprudence and law, as some jurisprudence defined it as a group of documents that are communicated (sent or modified) by an electronic mail system that includes brief notes of a real formality and can accompany attachments to it such as word processing and any electronic documents Others are sent as attachments with the same message ⁽¹³⁾.

The General Committee on Terminology in France defined e-mail as "an information document that the user edits, sends, or views by the user by connecting to the information network."

The French legislator defined it in the law issued on June 22, 2004 regarding confidence in the French economy as "every message, whatever its form, text or voice, or accompanied by images or sounds, is sent over a public communications network and is stored on one of the servers of this network or the terminal equipment of the addressee until The latter manages to recover it ⁽¹⁴⁾.

It is worth noting that Article (668) French pleadings permitted the use of fax in advertisement instead of mail, as the declaration was considered complete from the date of sending the letter. On March 14, 1994, the Toulouse Court went to the blessing of using one of the litigants' attorneys with the fax machine to announce the papers to the other opponent's lawyer as long as the lawyers had agreed in this, and the Toulouse court went to this consent that could be implicit, and the French Court of Cassation Appeal by fax was accepted, as was the cassation appeal ⁽¹⁵⁾.

Therefore, any reporting or electronic advertise can only be achieved through what is called an e-mail (private e-mail), and we can summarize the idea of this mail through two types and as follows:

- (12) Dr. Youssef Syed Awad, previous source, p. 281.
- (13) The same source, p. 282.
- (14) See website: www.admin.ch/f/as/2006/5677.pdf
- (15) Toulouse Appeals Chamber 2, 3/15/1994, Daloz Serry 1994, Court of Cassation, p. 320. Criminal cassation on 7/3/1989 Criminal Bulletin 1989 No. 281, p. 695, Criminal cassation on 10/19/1989, Criminal Bulletin 1989 No. 344, pp. 834,835, referred to in Dr. Muhammad Saber Ahmad, *The Role of Computers in Facilitating Litigation Procedures*, PhD Thesis, Faculty of Law, Tanta University, 2012, p. 148.

The first type is called the private e-mail, and this type can be worked within the one entity or one institution in the internal network, and this type of e-mail can be used within the same court to link between the internal units in the court, especially between clerks, electronic archiving pens and secretaries, and the communication between Secretaries and judges, with regard to following up on the progress of the case, and reviewing immediately every measure taken by the litigants or the clerk's office, as well as the circulation of data on the case as soon as it is conducted ⁽¹⁶⁾, but if a link is made between a number of courts or between a number of courts and between the court and the interest of experts Meaning that the connection goes beyond the scope of the court to other parties, this type is called (the extranet), which means private network communication between several branches of the same institution.

As for the second type of e-mail, it is called Entenet Access Providr, and this type is based on connection to the World Wide Web, whether through free e-mail sites or sites that are not permitted to be used except through a prior subscription to the applicant for this service ⁽¹⁷⁾.

In the event that the remote litigation system is approved in the near future, it can take over the electronic reported after receiving the case petition electronically to the court's website announcing or informing the defendant electronically and there are two assumptions ⁽¹⁸⁾:

The first imposition is the plaintiff's knowledge of the defendant's e-mail, which he includes in the lawsuit's petition. The specialist then announces the defendant on the electronic court's website, arriving at him as a government mail, adding to it the case number, date and place of the session, and the relevant department as well as the unified code number that is Through it, his lawsuit can be viewed remotely, notes are exchanged electronically, and court decisions can be followed up securely later.

The second assumption is that the plaintiff is not aware of the defendant's place of residence or his e-mail. Here, the clerk of the electronic court will take over, through the network connection with the Data Retrieval database, the Civil Status Department requesting access to the defendant's data necessary for the announcement, such as the place of residence or his e-mail installed in the card Smart patriotism, and of course, there will be similarity in the names, which will be displayed with their photos added to it in a combined report presented to the plaintiff without showing their data.

(16) Dr. Abdul Hadi Fawzi Al-Awadi, *Legal Aspects of Electronic Mail*, Dar Al-Nahda Al-Arabiya, Edition 2005, p. 13, referred to in Dr. Youssef Sayed Awad, previous source, p. 282.

(17) Dr. Youssef Sayed Awad, previous source, p. 284.

(18) Judge Muhammad Essam El-Tarasawi, *Circulation of the Judicial Case before Electronic Courts*, Dar Al-Nahda Al-Arabiya, Cairo, 2013, p. 89.

Upon identification of the defendant's photo owner, it is possible to contact him as we have previously explained.

In the event of activating the e-government and information communication, the defendant can be notified by the court or notified on a piece of paper or a voucher to subscribe to services, for example but not limited to (electricity, water, phone, commercial register, tax file, insurance number, if any ...) and in it Notify him of the necessity to read the court's e-mail in order to achieve knowledge of the person of the defendant or one of his residents in the property ⁽¹⁹⁾.

Likewise, in the case of activating the electronic litigation system, the means of notification is to send messages via e-mail to the address to be notified mentioned in the case list, provided that the message includes the following data: ⁽²⁰⁾

- 1 Introducing the system, how to access the site and inquire about it.
- 2 The name of the applicant and his representative, if any.
- 3 The name of the person to be notified, and it is assumed that the e-mail belongs to him.
- 4 The subject of the lawsuit, the value of the claim, and the date of the next session.

A hyperlink is added to the department's name so that the person to be notified can enter the department's website directly through the e-mail message sent to him. The arrival report for sending the message is an arrangement arranged with legal implications.

Among the legislation that promises the use of electronic means in the judiciary that will eliminate the slow pace of litigation and speed up procedures, in light of the huge number of cases that the courts consider daily in the Swiss Federal Kingdom according to Articles 41, 42, 60/3 of the Swiss Federal Kingdom Law issued in June 17, 2005, and this system entered into force on January 1, 2007. ⁽²¹⁾

Article (68), second paragraph of the Rome Statute of the International Criminal Court also indicated, and an exception to the principle of the openness of the sessions stipulated in Article (67), the court departments must protect the victims, witnesses or the accused to conduct any part of the trial in secret sessions or to allow evidence to be presented by means. Other special electronic.

Through the legislation and opinions of the jurists we have mentioned, it becomes clear to us that electronic judicial notification is a procedure that is applied by modern means that keep pace with modern developments, is not contrary to public order and achieves a public

(19) Judge Muhammad Essam al-Tarasawi, previous source, p. 90.

(20) Judge Hazem Al-Sharaa, previous source, p. 179.

(21) See website: www.Admin.ch/f/as/2006/5677.pdf.

interest that contributes to speeding up the work of the judiciary in resolving disputes in the shortest way and reducing time, effort and costs, and this requires legislative intervention that would To contribute to the process of developing litigation procedures, especially the amendment of Article (13) pleadings by adding the two e-mail words after the word registered mail as mentioned, as well as Article (16) in addition to a paragraph indicating the e-mail of the lawyer and the e-mail of each of the plaintiff and the defendant, if any, as data Additional data specified by the above article.

The second requirement reporting by mobile phone

Among the modern means of communication is the mobile phone (mobile) of all types, sizes, technical and electronic specifications, as it has become an important technical part in the lives of people, as it is a means of social communication for the bearer with relatives and friends, at all times and from anywhere, and it is a close friend of the bearer and his companion in All his activities, and he assisted him in fulfilling most of his obligations in all fields, including electronic correspondence, accounting operations, photography, recording, storage and internet connection.

As for the judicial field, it is considered by some jurisprudence as one of the modern means through which services of judicial can be made after the applicant submits a copy of the website operation contract between the service provider company and the subscriber who is required to be notified, or an explanation from the telecommunications company stating that the cellular, mobile or mobile phone line It is up to the person to be informed of ⁽²²⁾.

The reporting can also be done by the landline phone of the department or the place of work to be notified after confirming the place of work of the defendant in several official ways, including annotations from the Social Security Institution indicating the source of deductions that the plaintiff must secure from the institution based on the approval of the judge or the circuit, as well as by means of the home phone After confirming with the telecom company that the number is owned⁽²³⁾.

If there is a technical link between the e-mail and the mobile phone, then the method of reporting is more effective, and reporting by means of a mobile phone requires the following data:

Definition of the caller and the nature of the communication.

(22) Judge Hazem Al-Sharaa, previous source, p. 74.

(23) Same source, p. 75.

2 Confirm the identity of the caller.

3 Informing him of the name of the applicant and the representative, if any.

4 Informing him of the subject matter of the case, the value of the claim, and the date of the next session set according to the session schedule and what is presented therein.

5 Inform the caller about the department's address on the network and the mechanism for entering and inquiring.

In the event of repeated refusal to respond to the call, a brief message shall be sent to the person requested to be notified that includes the name of the plaintiff, his attorney, the subject of the case, the date of the next session, and the mobile and fixed phone numbers, including an automatic response service to provide information on the cases. Recording the call using the aforementioned method is an orderly procedure with legal implications.

In light of the foregoing, service of judicial can be done by three means as mentioned, instead of traditional notification, a legal notification that produces its effects, as in the usual notification once it is made, and the information attorney can also be notified by means of mobile phone and e-mail as well. Electronic judicial notification via telephone, in both types of mobile, landline, or fixed, as it is called, produces its legal effects, as it is a modern, widespread and multi-purpose means of communication under the judicial system, but it requires legislative intervention that makes the possibility of its use contributing to the development of the judicial procedural process.

The third topic

Electronic judicial notification procedures

The traditional service of judicial is considered one of the important and necessary procedures in the judicial work. Without it, or if it is not valid, a pleading cannot be conducted, and this leads to the failure to resolve the case, and since the issue of reporting this level of importance must be addressed through the presence of an efficient body that performs this task to achieve the goal of reaching the judiciary a proactive, who paints the features of complete justice. But we are in the process of carrying out this task through modern information technology means, so can these means fulfill this mission to achieve the goal of the judiciary

and bypass obstacles to traditional reporting by employing general rules and adapting them to work by electronic means without relying on human cadres? Therefore, it is necessary to divide this topic into two demands. In the first, we will examine the methods of Electronic Judicial Notification, and in the second we will discuss the most important difficulties facing electronic notification and how to address them.

The first requirement

Electronic Judicial Notification methods

What is meant by the electronic notification procedures is the application of the rules set by the law for how to inform the persons to be notified, whether they are natural or legal persons and whether their places of residence are inside or outside Iraq, except that the reporting is done through the aforementioned electronic means ⁽²⁴⁾, and these means can be used in All reporting cases stipulated in Article (21) of the Law of Procedure amended according to Resolution of the dissolved Revolutionary Command Council No. (709) of 1979, corresponding to Article (13) Egyptian pleadings, related to reporting the defendant to whom the above article referred. The office of the electronic notification unit in the court can be accredited by reporting to the electronic address that the plaintiff proved in the lawsuit petition, if there is a substantive agreement between him and the defendant that defines the obligations of each party, and determines the legal residence of each of the parties pursuant to Article 54 of the Civil Code that approved the idea of the citizen If the person chooses a specific place to carry out a specific legal act, this place is called the chosen one, and it is valid to inform him about everything related to this work unless it is expressly stipulated that this residence be restricted to work without others. Article (43) corresponds to an Egyptian civilian, and Article (111) civilian French ⁽²⁵⁾, as is the case with Article (43) a Libyan civilian, Article (42) a Jordanian civilian, Article (45) a Syrian civilian, and Article (39) an Algerian civilian. Therefore, notification by electronic means can be done on the basis of the chosen domicile if the parties agree on that.

However, it is not permissible to prove the chosen domicile except in writing pursuant to the text of Article (3/43), an Iraqi civilian. Therefore, there must be an agreement between the parties to the case to write the chosen place of residence to be notified by the electronic means, and this matter requires legislative intervention that allows the notification to be conducted by electronic means and to count the electronic home. As a substitute for the chosen citizen stipulated in the civil law, and then litigants can use electronic means to file their lawsuit with the necessity of the other opponent accepting to receive the incoming notification through relying on electronic means, and in a judicial decision of the Court of Cassation in this regard that it is permissible for the litigant to change domicile In which it is valid to announce it and to change its current residence, provided that it is notified of the cancellation of the previous residence, and it is not valid to announce it in the previous domicile. ⁽²⁶⁾

(24) Youssef Sayed Awad, previous source, p. 290.

(25) Article 111: (Modifié par LoI n0 2007-1787 du 20 décembre 2007 art. 26 (v) Lorsqu'un acte contiendra, de la part des parties ou de l'une d'elles, élection de domicile pour l'exécution de ce meme acte dans un autre lieu que du domicile réel, les significations, demandes et poursuite relatives a cet être celui des dispositions de l'article 48 du domicile convenu, et, sous réserve code de procedure civile, le juge de ce domicile .

(26) Appeal 40801 BC on January 2, 1980, dated 05/25/1966, referred to in Dr. Youssef Sayed Awad, previous source, p. 291.

In the event that the e-government is activated in a way that achieves a state of permanent contact with the public and all institutions and departments between them, it can

meet not only the informational and service needs of citizens and inquiries only, but rather develop the concept of legal informatics and perform alternative procedural roles to the human role, through the judiciary system Through electronic means, because of the impact of this role on the legal and judicial system as a whole, and to achieve speed, interactivity and coordination between government departments collectively or each of them independently. ⁽²⁷⁾

Therefore, the reporting through electronic means will serve as a link between the electronic government and the desired effectiveness of using those means in the judicial system, and electronic notification by electronic means can perform all the usual reporting procedures and the cases stipulated in Article (21) Iraqi pleadings related to reporting members of the armed forces Prisoners, civil companies, associations, private institutions, and commercial companies, and then electronic notification will fulfill the required purpose and achieve the goal that the law is keen on in accordance with the following procedures, taking into consideration the legal periods of reporting ⁽²⁸⁾

- 1 The notifications related to the state and public persons: Through information linking within the framework of e-government, it is possible to inform all government agencies' interests between them, via the website of each party, in accordance with the provisions of Law No. (78) Of 2012.
- 2 As for commercial companies, associations, private establishments, and other persons that are established with the knowledge of the Communications and Information Authority, and through the company's commercial register newspaper, companies can be notified by mail sent from the court's site to them, according to the legal guarantees of notification.
- 3 As for the notification of members of the armed forces, it is possible, through the relevant section of the court, to write to the judicial institution competent in the armed forces, through its website, within the framework of the electronic government.
- 4 As for prisoners, the interest can be messaging sector, the Ministry of Interior prisons content of the text of the message data sent from the court website.
- (27) Lawyer Yunus Arab, E-Government and the Public Framework, a research published on the Arab Law website www.arablaws.com.
- (28) Judge Muhammad Essam al-Tarsawi, previous source, p. 91, Judge Hazem al-Sharaa, previous source, pp. 180-181, also see the first paragraph of Article (21) of the Iraqi Procedure Law.
- 5 As for people who have a known home abroad, they can be corresponded via e-mail directly, or in coordination with the Ministry of Foreign Affairs within the framework of government cooperation with each other.
- 6 If the court realizes that the person to be notified does not have a specific place of business, place of residence or residence, then he shall be notified of publication in the Official Gazette once, and the published announcement must include all the data contained in the regular reporting paper.

The second requirement

Difficulties facing electronic notification and how to address them

The reliance on e-mail may raise many difficulties and concerns in applying electronic notification procedures, due to the novelty of the system and insufficient knowledge of the technical aspects of many, and the most important of these difficulties and shenanigans are:

- 1 An error in the email to be reported (error in the email data or domain designation).
- 2 The inability of the e-mail to be notified to receive the e-mail sent to him, whether due to technical error or full space for the e-mail addressee.

- 3 The malfunction or failure of the network or the servers that work to carry the electronic message to the addressee, i.e. the one to be notified.

This is normal and it is possible to refer to the traditional means established for regular reporting by the electronic court administration to determine the risks and guarantees that may be available in order to obtain judicial procedures without violating the guarantees established by law in accordance with the general rules of the traditional methods of reporting ⁽²⁹⁾

Among the methods of treatment also there must be, in addition to the judicial apparatus, the assistants and the administrative staff in the courts, a management of technical information related to the legal aspects that take place through electronic devices, as well as the legislation of a law to organize this administration and determine the legal nature of its work and its jurisdiction and the issues that should be resorted to,

- (29) Dr. Youssef Sayed Awad, previous source, p. 292.

As well as the methods and reasons for appeal the procedure that takes place through electronic means before it, so that this administration is modeled on the expert and forensic medicine department of the Ministry of Justice and a special regulation is issued in its regard. The French Court of Cassation, the Corporate Circuit, has ruled a ruling regarding the wrong use of corporate e-mail ⁽³⁰⁾.

As for activating the use of electronic means individual, commercial and banking transactions, there are many experiments that seek to activate the role of digital signature in the field of electronic commerce, and what the Kuwaiti Ministry of Justice has directed towards regarding the necessity of issuing e-mail from an approved party so that e-mail is issued in the State of Kuwait Through the Kuwait Institute for Scientific Research on behalf of the Ministry of Communications, as part of the pivotal role that electronic certification bodies play in the growth of electronic commerce through the commercial use of electronic signature and e-mail between companies, whether at the local or international level ⁽³¹⁾

Thus, for all Arab countries that have issued the law on electronic signature and electronic transactions, they are working to activate the contents of their laws by issuing the necessary licenses to practice information technology activities and industries in accordance with the provisions of laws and regulations governing them, in order to achieve the effectiveness of these laws by issuing legislative amendments to some legal articles In the civil and commercial law, to provide for the use of electronic means to be among the tools that individuals or legal persons can use, and to provide legal protection for the user and recipient of e-mail messages, as stated in Article 22/1 of the executive regulations of the Egyptian Electronic Signature Law ⁽³²⁾.

Accordingly, according to the foregoing, the procedures that can be carried out through the use of electronic means can be productive for their required legal effects, and have the same authority established for traditional procedures in the law of civil pleadings, if the legal conditions and technical and technical controls specified by the executive regulations are taken into account in their practice, and in this case It can be said that these advanced means have been employed in the court of law to implement some legal measures to achieve justice as quickly as possible and reduce efforts and costs together.

- (30) French Court of Cassation. 45269-3 In a session 6/2/2004, the Corporate Chamber regarding the wrong use of corporate e-mail. .

- (31) Dr. Youssef Sayed Awad, previous source, p. 293.
- (32) See Article 22/1 of the executive regulations issued by Resolution 109 of 2005 on May 15, 2005 of the Egyptian Electronic Signature Law No. (15) Of 2004.

Conclusion

The conclusion includes the most important findings and recommendations:

First: main findings

- 1 The scientific and technical progress in all the various facilities of life is the distinctive character of the modern era, and it is the title of the progress and advancement of states. Judicial work must develop and justice is delivered to litigants in the easiest and fastest way, through the use of modern technology means that have become a reality that must be dealt with, and not ignore it or turn a blind eye to it.
- 2 I have helped spread the work of computer in all areas of life, many of the legislators countries to cope with this deployment and technical progress as well as the evolution of the international telecommunications network of the Internet, to try to enter work in the field of law for the benefit of modern technology, where he was the first Iraqi legislator step It is the issuance of the Electronic Signature Law No. (78) of 2012 in an attempt to regulate this modern method of recognizing its value and keeping pace with the technical information development in the court arena, in addition to Article 21 of the Federal Supreme Court Law No. 30 of 2005.
- 3 This system deals with the information level of judge's assistants, qualification and development of their competence at the legal and technical level.
- 4 It was found through the research that this system is characterized by a set of characteristics, the most important of which is leaving the paper system, approving documents, electronic writing and electronic signature instead of using papers, handwriting and regular signature, as well as not going to the residence of the litigants, but rather that is done remotely through the computer that It is linked to the Internet and on the court's websites via e-mail by activating the electronic signature law, which supports the process of transition from the paper world to the paperless world. Other.
- 5 Adherence to the reporting system or electronic announcement of pleading papers leads to avoiding missing procedural deadlines and also leads to saving time because the procedure that was performed by the amount and the time spent in the notification or announcement process has become with this modern mechanism that can be accomplished by simply pressing a button on the computer via Telecommunication network

Second: The most important recommendations

- 1 The necessity of activating the website of the Supreme Judicial Council and all kinds of courts, and linking it to a single information network, and the government should try to activate the e-government system in a serious manner and not promises.
- 2 The necessity of applying the electronic notification system (by e-mail) along the lines of the aforementioned article of the Federal Supreme Court Law for Illness Union, even with interim legislative interventions for some commercial and civil cases to include all cases in the future.
- 3 Appealing to the Supreme Judicial Council to the necessity of training judges and their assistants in the use of electronic means in judicial work, provided that it is a condition for appointment to those holding an IC3 certificate, which is mastery of work and knowledge of the computer system, electronic communication systems and the Internet, and it is also a condition for the admission of graduate students currently, in order The

role of these auxiliaries to the judiciary is fulfilled provided that it is from a governmental academic institution.

- 4 The necessity to reconsider Article 3/1 of the Electronic Signature Law No. 78 of 2012 to reduce some exceptions to activate electronic notification in the field of judicial work.
- 5 The need to amend Article 13/1 Iraqi pleadings by adding the following phrase in the text of the article and placed after the reference registered mail (or by one of the electronic means of communication), as well as a reference to it in the content of Article 21 Iraqi pleadings.

Finally, and through these recommendations, we hope that this study has shed light on the development of the idea of remote reporting through the use of electronic means and the application of litigation procedures through its mediation, and then it will be an attempt to keep pace with the changes and invest them to achieve justice and catch up with the civilized world.

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