



MODERN MEANS OF PROOF IN ADMINISTRATIVE CASES:A COMPARATIVE STUDY (FRANCE - EGYPT - JORDAN)

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Abstract

This research states that contemporary technology created numerous tools that different governments utilize in their everyday interactions with workers and citizens, making these tools one of the most relevant evidence before the court. Jordanian and Egyptian legislation followed the French legislator, who introduced these methods in the French civil law and later in a separate statute. Egyptian and Jordanian legislators created the electronic signature and electronic transactions laws, respectively. The administrative judge recently accepted evidence notwithstanding the lack of an independent legislation controlling it and the administration's legal existence. When technological restrictions are followed, the law gives electronic writing and signature ultimate power. Email has authority. The Jordanian, Egyptian, and French lawmakers proclaimed their embrace of contemporary communication in administrative operations after the research. They equalized those means in evidence before the administrative judge. After technological and legal constraints, the Jordanian legislature has granted contemporary proof unlimited power. The need to train administrative officers in contemporary technologies and how to handle electronic evidence before the administrative court without relying on electronic signature certificate firms.

When legal restrictions are followed and responsible authorities are identified, electronic writing, signature, and email increase trust and security in administrative processes. Therefore, we suggest that Jordanian and Egyptian lawmakers promptly pass a specific administrative court evidence statute.

Keywords: Egyptian, Jordanian, French lawmakers, administrative operations, administrative court

INTRODUCTION

Modern technology has become an integral part of life, casting a shadow over all aspects of human life. It enters into all the details of human daily life and it is in continuous development that the mind is unable to comprehend.

Technology intervened largely in the legal life, so it of Electronic commerce appeared at the beginning and took place through modern means of communication. Then this technology spread to the rest of the aspects of legal dealings to the extent that the administration concluded most of its actions by relying on technology. Moreover, we find that most countries recently have adopted the



e-government or digital government. On doing so, it has transferred all management actions, whether decisions or contracts, to take place through modern technology.

Several ways of dealing appeared between the administration and individuals, including electronic writing, electronic signature, and the exchange of all its legal actions using modern technology such as e-mail.

This technological revolution that took place through computers and modern communication networks necessarily led to the emergence of new electronic evidence. Thus, the world has become a small village as the administration can conclude any action in any other place with the utmost ease. The management papers, which years ago were evidence of the actions of the legal administration, have today become evidence of the administration's bureaucracy, its backwardness, and its failure to keep pace with modern technology.

Evidence is only one of the means of defense that people provide to state certain facts by establishing evidence and presenting arguments on those facts in order to convince the judge of what they claim according to specific procedures.

The issue of proof in administrative cases is of peculiarity, due to the different legal positions of the parties to the conflict. Modern means of proof came to increase this peculiarity of this situation. In the absence of legislative regulation of proof before the administrative judge, and in light of the administration's increasing use of modern technology, are modern means of proof valid before the administrative judge?

Such a transformation had a direct impact on all the legal rules that govern the administration's actions, so these modern means became a tool of evidence.

STUDY PROBLEM

The issue of proof by modern means before the administrative judge in the absence of the legislative system, whether in Jordan or Egypt, remains one of the main determinants in the formation of legal systems, especially with the increasing use of technology by the administration. It is a criterion by which the degree of progress of those systems and their ability to achieve their national goals are measured. The issue of proof using modern technology is not a form of legal luxury, but rather rules, concepts and content. One of the most important of these contents is the extent to which the administrative judge can handle it. Using the means of modern technology is not a form of legal luxury, but rather rules, concepts and content. One of the most important of these contents is the extent of the administrative judge's admissibility of it.

STUDY QUESTIONS

The researcher will present the research problem by answering the following questions:

What are the most important difficulties that face proof in administrative disputes resulting from the legal status of the administration?



What are the most important modern means of proof? What is the extent of its admissibility before the administrative judge?

STUDY AIMS

The study aims to focus on several points:

- Identifying the difficulties encountered in the evidentiary system before the administrative judge.
- Identifying the effects resulting from the legal status of the administration in the field of evidence.
- Identifying the most important recent evidence before the administrative judge.
- Identifying the admissibility of the modern evidence tool before the administrative judge.

STUDY METHODOLOGY

The researcher depends on the analytical approach, the deductive approach, and the comparative approach:

The analytical approach: It is used to analyze the position of the legislations that regulate the electronic evidence process before the administrative judge.

The deductive approach: It relies on eliciting ideas after analyzing the texts of the law.

The comparative approach: It is used to compare the Jordanian legal systems with the Egyptian and French law through presenting the position of these legislations regarding the process of proof by modern means.

STUDY PLAN

The subject of modern means of proof in administrative cases will be presented in two topics as follows:

First topic: peculiarity of proof in administrative cases

Second topic: Modern means of proof and their authority in administrative disputes

FIRST TOPIC

PECULIARITY OF EVIDENCE IN ADMINISTRATIVE CASES

FORWARD AND SECTIONALIZATION

The rules for administrative evidence mainly target administrative lawsuits that include adjudication of a dispute or administrative dispute in its usual form, which include abatement of lawsuits and full court lawsuits that are based on administrative disputes related to legal rights or legal positions.

The peculiarity of evidence in administrative lawsuits lies in the nature of those lawsuits, as they are characterized by modernity compared to the articles of civil and criminal law. The administrative law arose in a late period, which made the administrative litigation lack an integrated law for administrative procedures. Moreover, administrative lawsuits have a special nature in terms of their parties, The administrative lawsuit arises between the administration as a public authority whose aim is to achieve the public interest, on the one hand, and between individuals - whether a public employee or a contractor with the administration - on the other hand, within the framework of what is required by the principle of legality. All of this resulted in the emergence of several factors affecting the nature of the administrative dispute. These factors



revolves around the administration's privileges as a permanent party to the administrative lawsuit, as these factors lead to an unequal legal status between the parties to the dispute in terms of proof, and therefore special means of proof for administrative lawsuits should be found.

Taking advantage of the previous steps of jurisprudence and the relevant comparative administrative judiciary does not mean that the link is completely broken between the rules of evidence, and the few provisions mentioned in the legal texts in administrative law and other rules of evidence in other branches of law because there are general principles in evidence, which is one of the principles of litigation that does not differ from one dispute to another.

This is what we discuss in this topic, which I divided into two themes as follows:

First theme: Difficulties of proof in administrative disputes

Second theme: Legal status of the administration in proving administrative disputes

FIRST THEME

DIFFICULTIES OF PROOF IN ADMINISTRATIVE DISPUTES

The evidentiary stage before the administrative judge suffers from several difficulties stemming from the recent emergence of the administrative law. The dominant feature of the administrative judiciary - or the State Council judiciary as it is called in Egypt and France - is its recent inception, which resulted in the absence or lack of approved judicial precedents in the field of evidence, and the dispute. The administrative disputes enjoy a special nature in terms of its parties, as the administration is in a higher legal position than the other party.

This is what we are dealing with in this theme, which I have divided into two sections:

FIRST SECTION

DIFFICULTIES RESULTING FROM THE LACK OF A LAW OF EVIDENCE FOR ADMINISTRATIVE DISPUTES

The administrative judiciary became known recently, as the first law of the Supreme Court of Justice No. 11 of 1989 was issued, then Law No. 12 of 1992, and finally the Administrative Judiciary Law No. 27 of 2014⁽¹⁾, which came devoid of a statement of the evidentiary materials used before the administrative judge.

With regard to Egypt, Article (3) of the State Council Law No. 47 of 1972 referred to Law No. 25 of 1968 concerning evidence in civil and commercial matters. Article 3 of the State Council Law stipulated that "the procedures stipulated in this law and the provisions of The Law of Proceedings shall be applied if do not contain a text until a law is issued regarding the procedures related to the

⁽¹⁾Jordanian Administrative Judiciary Law No. 27 of 2014, published in Official Gazette No. 5297 dated 8/17/2014, p. 4866



judicial department. There is no special law of evidence has been issued in administrative cases since the establishment of the Egyptian State Council until now⁽²⁾.

It seems that the absence of special rules of evidence in administrative matters is due to the modernity of the administrative judiciary, as the administrative law arose in a late period compared to the emergence of civil and criminal law. This made the administrative litigation lack an integrated procedural law until today.

Although France is considered the pioneer of the dual judiciary (non-unified judiciary), the organization of the administrative judiciary is relatively new, as it dates back to the year 1800 AD, which is the eighth year of the French Revolution, with the establishment of the Council of State and the councils of the regions known as the Administrative Courts⁽³⁾.

The Egyptian State Council was established in Egypt in the year 1946 AD, and its competencies began to expand gradually until the Council became comprehensive in all administrative disputes in 1972, while we find that the civil and criminal judiciary were organized a long time ago, which resulted in the availability of procedural legislation and the accumulation of judicial precedents⁽⁴⁾.

For this reason, the features of proof in the field of administrative judiciary were not clear under the Jordanian and Egyptian systems, so the one who establishes evidence is required to reconcile the general rules in litigation procedures with the rules for administrative evidence.

The process of guiding the judge to the rules of evidence that should be adopted aims to achieve a balance between the parties to the administrative dispute in order to keep him away from criticism. This will perhaps benefit judges in courts and litigants with a relationship, whether individuals or the administration, as well as the accused of lawyers and researchers.

This difficulty increases when jurisprudence abandons the study of the provisions of administrative proof and its lack of interest in that, with the exception of some sporadic efforts that depend on judicial precedents in the field of administrative judiciary. As a result of these difficulties, the systems did not harvest integrated techniques for rulings of evidence before the administrative courts, whether in terms of procedural or substantive aspects.

The situation is not much different in France, as many of the provisions of evidence, especially the procedural ones, were organized before the French administrative courts by the law issued on July

⁽²⁾ Dr. Shadi Muhammad Arafa, Evidence by Electronic Means in Administrative Contracts, "A Comparative Study," Journal of Legal and Economic Research, Issue 73, September, 2020, p. 251

⁽³⁾ Dr. Ahmed Kamal El-Din Musa, The Theory of Evidence in Administrative Law, Dar Al-Shaab Institution, Cairo, 1977, pg. 37

⁽⁴⁾ Dr. Imad Muhammad Ahmad Rabi`, The Authenticity of Testimony in Criminal Evidence, 1st Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 1999, pg. 15



22, 1889 AD and the rules complementing it. However, the situation is otherwise before the French Council of State and other specialized administrative judicial bodies such as the Court of Accounts, the District Pensions Courts, the Budget Implementation Supervision Court, the recruitment dispute councils, where the provisions of evidence, whether procedural or substantive, were not comprehensively organized before them, with the exception of some procedural parts. ⁽⁵⁾

If the legal systems in Jordan, Egypt and France have clarified to a large extent the features and specificity of some rules of administrative evidence, as previously mentioned, then the matter becomes more difficult and complicated in light of the systems that adopt the principle of the unified judiciary, that is, in which there is no specialized administrative judiciary, given that the legislator did not codify and did not issue a special organization for the practice of administrative judicial procedures separately, and therefore special rules for administrative evidence. The matter remains governed by litigation procedures in accordance with the Law of Procedures and the general rules of the Law of Evidence applicable to most disputes, including administrative disputes, and this is not consistent with the nature of the administrative case. This is due to the different rules of evidence in the case of administrative litigation and ordinary litigation. The matter is related to the plaintiff who bears the burden of proof on his shoulders in the administrative litigation, and he is the weak party and lack the evidence and administrative privileges possessed by the defendant administration that enjoys the strongest position. This means that it is difficult to apply the rules and procedures of litigation stipulated in the Procedures Law and the general rules of evidence. ⁽⁶⁾

SECTION TWO

DIFFICULTIES ARISING FROM THE PECULIAR NATURE OF ADMINISTRATIVE LITIGATION

From a practical point of view and with regard to the nature of administrative disputes, we find that there is an undisguised difference in the legal positions of the parties to the conflict, stemming from the difference in the nature of the legal association in public law than in private law. Also, with regard to the positive role that the administrative judge plays in administrative disputes, there is imbalance in the judicial positions allow the judge the possibility of adopting all the evidence, either fully or incompletely, as the administration is in a higher position than the other contractor and enjoys unlimited powers compared to him ⁽⁷⁾.

The difficulty of administrative evidence also lies in what distinguishes administrative lawsuits from a peculiar nature, as it relates to administrative links, whether a contract or a decision, that arises

⁽⁵⁾ Dr. Ahmad Kamal al-Din Musa, *ibid*, pg. 57

⁽⁶⁾ Dr. Suleiman Al-Tamawy, *The Judiciary of Revocation*, Dar Al-Fikr Al-Arabi, Cairo, 1967, pg. 251

⁽⁷⁾ Dr. Sami Gamal El-Din, *Administrative Judiciary and Oversight of Administration Work*, Abu Al-Azm for Printing and Publishing, 3rd Edition, Cairo, 2002, p. 14, Dr. Hisham Abdel Moneim Okasha, *The Role of the Administrative Judge in Evidence*, Dar Al-Nahda Al-Arabiya, Cairo, 2003, p. 3



between the administration as a first party that performs its administrative function and individuals, whether they are employees or contractors. It is based on the public interest and principle of legality prevails in it⁽⁸⁾. This resulted in the emergence of several factors influencing the litigation revolving around the privileges of the administration as a party to the administrative lawsuit and controls the formation of the rules of evidence in the administrative law. These factors resulted in the emergence of a lack of fair balance between the two parties to the lawsuit in terms of proof, which requires the provision of special means of administrative proof, it is based on addressing the administrative case by taking advantage of the previous steps of jurisprudence and comparative administrative judiciary, and the few provisions mentioned in the legal texts in this regard, provided that this does not mean that the connection between the rules of evidence before the administrative judge and other rules of evidence in other branches of law is completely broken. Furthermore, there are general principles in evidence that are considered among the principles and requirements of litigation and do not differ from one dispute to another⁽⁹⁾.

SECOND THEME

LEGAL POSITION OF ADMINISTRATION THAT INFLUENCES THE ESTABLISHMENT OF ADMINISTRATIVE DISPUTES

Evidence before the administrative judge differs from other civil and criminal cases. There are several factors that must be taken into account, which find their source in the nature of the administrative dispute that the administrative judge is looking into. All these factors are based on the idea of the administration being a permanent party to the administrative case in the form of a public authority - the administration often enjoys special privileges as it is the highest party in the litigation. The impact of these privileges appears on the administrative dispute. In terms of the plaintiff - who is often the individual - the owner of the private interest standing stripped of any privileges or powers, which affects the administrative dispute, where the element of equality between the two parties is denied before the administrative judge are before the administrative judge. This is considered a conflict between the public and private interests, although the constitutions and procedural laws oblige the judiciary, whatever the type of case, to take into account the principle of equality, as it is one of the most important legal pillars of the state.

This will be made clear in this theme, which I divided into two sections as follows:

⁽⁸⁾Dr. Taima Al-Jarf, *The Principle of Legitimacy and the Controls of Subordination of Public Administration to Law*, Dar Al-Nahda Al-Arabiya, 3rd edition, Cairo 1976, p. 3, d. Sami Jamal Al-Din - *Administrative Judiciary and Oversight of the Administration's Work*, *ibid*, pg. 14 et seq

⁽⁹⁾Dr. MasoudChihoub, *General Principles of Administrative Disputes, Bodies and Procedures Before Them*, 2nd Edition, University Publications Office, Algeria, 2009, p. 59, Dr. Ahmad Kamal al-Din Musa, *ibid*, pg. 5



FIRST SECTION

MANAGEMENT PRIVILEGES IN FRONT OF THE OTHER PARTY

The administration, in the face of the other party, enjoys several privileges that give it a position that the other party lacks. The administration stands before the administrative judge and enjoys these advantages, as a public authority that individuals resort to. It is the one that possesses the papers and it has the authority to directly implement its decisions.

FIRST: ADMINISTRATION'S POSSESSION OF THE PAPERS

The papers that the administration possesses are the main way that it enjoys, so these papers are considered the main way to prove administrative facts and the actions of working administrative workers. Administrative papers are the main means of proof before the administrative judiciary. Judicial administrative procedures are characterized as written, as well as exhaustive, as they are carried out under the supervision and directives of the administrative judge⁽¹⁰⁾.

Here, the difficulty appears in the administration's possession of administrative papers. All papers and documents are kept by the administration, and all data are recorded in its archives. Therefore, it is difficult for the individual plaintiff who bears the burden of proof to obtain these papers from the administration to present them against the administration. Thus, the administration's possession of papers and documents related to the subject matter of the dispute represents an important privilege in the field of proof. Its importance appears in weakening the position of the plaintiff. For this reason jurisprudence and comparative administrative judiciary established that the deviation defect of authority is one of the intentional defects in administrative behavior, which is based on the administration's intention to deviate from the authority. This makes it difficult to detect the administration's intention except through the file, and if there is no evidence in the file for the existence of this intention, then there is no defect of deviation⁽¹¹⁾.

As for the authority of the administrative paper, it takes two forms: either it has official authority in the manner known in private law, and that is when the required formal aspects are taken into account, and it may be customary papers issued by individuals or ordinary people without the intervention of a competent public official in editing them. In both cases, administrative papers are considered to be in the possession of the administration proving administrative facts⁽¹²⁾.

⁽¹⁰⁾ Dr. Abdel Aziz Abdel MoneimKhalifa, *Evidence Before the Administrative Judge*, 1st edition, Dar Al-Fikr Al-Jamei, Alexandria, 2008, p. 81, Dr. Mustafa Kamal Wasfi, *Principles of Administrative Procedures: A Theoretical and Applied Study*, Book One, Cairo, 1961, p. 20

⁽¹¹⁾ Judgment of the Egyptian Supreme Administrative Court on 15/1/1962. See also. Dr. Hussein bin Sheikh AthMalwiya, *Evidence in Administrative Disputes, "Basic Rules"*, Dar Homa for printing, publishing and distribution, Algeria, 2005, pg. 247, Dr. Ali KhattarShatnawi, *Encyclopedia of Administrative Judiciary*, 1st Edition, Dar Al Thaqafa for Publishing and Distribution, Amman, 2008, pg. 605

⁽¹²⁾ Dr. Ahmed Nashat, *A Treatise on Evidence*, Dar Al-Nahda Al-Arabiya, Cairo, without a year of publication, pg. 261



In terms of the content of the administrative paper, it may be evidence of a legal act as well as a material fact. It may relate to the activity of the administration and its workflow, or facts related to the conditions of the employees in the administration, or others who have a relationship or connection with it, whether it is a contractual relationship, as is the case with the contractor with the administration, such as a supplier or a contractor, or was it a non-contractual relationship such as the relationship of expropriated persons or those under house arrest, or who it was decided to not to grant them citizenship or residency and so on⁽¹³⁾.

The administrative paper may take the form of an administrative decision, such as an organizational decision, i.e. a presidential decision, a ministerial decision, or a regulation issued by a competent authority, or an individual decision regarding appointment, promotion, dismissal, or expropriation for the public benefit, as well as other forms of organizational or individual administrative decisions. The paper is a copy of a contract that is kept in the management file. Also, it may be like the internal administrative instructions and publications that are issued to regulate the progress of administrative work within the facility. The administrative paper can also be like administrative records such as court hearings, judicial or administrative committees, and election or police minutes. Moreover, it may be technical or administrative reports related to the progress of administrative work or to a specific administrative or technical activity, or to one of the employees of the administration or others, such as adequacy reports, engineering or accounting reports, or the report of the state security agencies⁽¹⁴⁾.

Accordingly, all administrative actions are recorded in the administrative papers, so the employee has an obligation to prove all the facts related to his work as soon as they occur, and to write down what is related to his activity first-hand in the papers and in the manner prepared for that, while not relying on his personal memory, or the memory of others. This writing, formed over the days, constitutes the objective administrative memory that is referred to when necessary⁽¹⁵⁾.

Administrative papers are kept in files regularly and sequentially, on the basis their date according to established facts. The method of preservation may require the assistance of specialists who have sufficient experience and knowledge in such work, such as men of documents and libraries. Therefore, administrative papers are of great importance in proving administrative facts and achieving the conviction of the administrative judge of its validity in light of the system of work in the administrative apparatus, which relies on files and records, which are considered the basis of evidence before the administrative judiciary⁽¹⁶⁾.

⁽¹³⁾ Dr. Ahmad Kamal al-Din Musa, *ibid*, pg. 57

⁽¹⁴⁾ Sarah Frouji, *Modern Evidence in Administrative Materials*, Master's Thesis, Faculty of Law, Mohamed Khudair University, Algeria, 2015, pg. 36

⁽¹⁵⁾ Dr. Mustafa Kamal Wasfi, *Principles of Procedures*, *ibid*, p. 339

⁽¹⁶⁾ Dr. Mustafa Kamal Wasfi, *Principles of Procedures*, *ibid*, p. 339



SECOND: THE PRESUMPTION OF INTEGRITY AND VALIDITY OF ADMINISTRATIVE DECISIONS

The presumption of integrity is one of the prominent features that the by administrative papers enjoy in general and administrative decisions in particular. This presumption means that the administrative decision remains valid and effective from the date of its entry into force until its expiration by canceling, amending or withdrawing it⁽¹⁷⁾.

The presumption of integrity includes all forms of administrative decisions, including negative administrative decisions, whether the administrative decisions are explicit or implicit. They are assumed to be sound until the contrary is proven. Even in defective decisions the presumption of validity sticks to them until they are canceled or modified by the judiciary or withdrawn by the administration. So, it is a simple presumption that accepts proof to the contrary⁽¹⁸⁾.

And administrative decisions that enjoy the presumption of integrity and validity presuppose the need for actions that have immediate effects, and do not obstruct the achievement of the public interest. This results in non-arrest of judgment of administrative decisions when they are challenged by cancellation. This behavior is considered one of the advantages of administrative litigation procedures. Administrative decisions, unlike the actions of individuals, are self-enforceable until the date of withdrawal or cancellation, provided that this principle is contained in an exception by the text of the law, which is to authorize the administrative judge the judicial authority to stop the implementation of the contested decision in accordance with the established conditions⁽¹⁹⁾.

The presumption of integrity of administrative decisions results in the plaintiff against the administration becomes in a difficult position, as he is the one who bears the risk of litigating the validity of these decisions. Therefore the defenseless individual stripped from the evidence stands in the position of the plaintiff, while the administration stands in the position of the defendant in the lawsuit, which is an easier and better position than in terms of the burden of proof. Thus the phenomenon of fair imbalance between the parties in the administrative case arises.

Third: The privilege of direct implementation of administrative decisions

The direct implementation of the decisions issued by the administration is considered one of the most important rights it enjoys. The direct implementation of the administrative decisions means to implement the decisions against individuals by force without the need for the intervention of the judiciary to seek its permission in the enforcement.

⁽¹⁷⁾ Dr. Suleiman Al-Tamawy, *The General View of Administrative Decisions*, Dar Al-Fikr Al-Arabi, Egypt, 1966, p.: 633, Dr. Aida Al-Shami, *Privacy of Evidence in Administrative Litigation*, without edition, Modern University Office, Alexandria, 200, p. 82

⁽¹⁸⁾ Dr. Abdel Aziz Abdel Moneim Khalifa, *Evidence before the Administrative Judge*, *ibid*, pg. 91

⁽¹⁹⁾ Dr. Ashraf Abdel-Fattah Abul-Magd, *The position of the revocation judge on the authority of the administration to cause administrative decisions*, without edition, United Arab Company for Marketing and Supplies, Cairo, 2000, p. 509



Direct implementation is, in fact, a means that aims to achieve consistency and conformity between the legal system and the legal effects of administrative decisions on the one hand, and the realistic material reality on the other hand. The administration is authorized to apply the law to individual cases, and the law has given it a presumption of integrity and validity of the decisions it issues until the opposite is proven. In the event that the person concerned refrains from implementing the administrative decisions and there is no way to force him to implement them, here the administration does not find the help to carry out their activities with though including the priority of public interest⁽²⁰⁾.

The speculative finds that this privilege represents a threat to the interests of individuals addressed by administrative decisions. It may affect their personal freedoms, such as arrest decisions, as well as their private rights, and the right to property, such as expropriation decisions. Direct execution may result in effects that cannot be addressed, such as implementing a decision to demolish a house or close a shop. If the decision is found to be unlawful when the person concerned appeals it after its implementation, then the damage has occurred due to direct execution, and it is irrecoverable. Moreover, direct implementation that is carried out by the administration takes place without resorting to the judiciary. Hence, the individuals lose a guarantee represented in examining the seriousness of the administration's position and the integrity of its claims before carrying out implementation⁽²¹⁾.

A part of the jurisprudence saw that the direct implementation of decisions is not a general principle in their implementation, but rather it is a license empowered to the administration. Therefore, it is established in jurisprudence that the direct administration implementation of administrative decisions is an exception from the general principle represented in the necessity of following the judicial path and obtaining an enforceable judgment to resolve the dispute administration and individuals. On the contrary, some jurisprudence considered the administration's resort to the direct implementation of its decisions is the general principle. The rule in the administration's actions is to be implemented directly, unless there is an explicit text that requires it to resort to the judiciary first⁽²²⁾.

Since the direct execution method is an exceptional method, it is restricted to certain cases:

- A- In the case of an explicit provision allowing the administration to use direct execution.
- B- In the event of necessity: That is there is a danger that threatens law, which cannot be remedied by normal methods. The goal of direct implementation must be to achieve the public interest and

⁽²⁰⁾ Dr. Abdulaziz Abdel MoneimKhalifa, Evidence before the Administrative Judge, *ibid*, pg. 93

⁽²¹⁾ Dr. Salah Allawi, Administrative Decision, p. 217 d. Aida Al-Shami, *ibid*, pg. 85 et seq

⁽²²⁾Dr. Ibrahim Abdel Aziz Shiha, Fundamentals of Administrative Law, Manshaat al-Maarif, Alexandria, without a year of publication, p. 195, Dr. Abdulaziz Abdel MoneimKhalifa, Evidence before the Administrative Judge, *ibid*, pg. 93



not the private interest. Also, it is not necessary to sacrifice the private or individual interests of members of society except within the limits that it is allowed in case of necessity⁽²³⁾.

It follows from the privilege of direct execution placing the administration in a higher and stronger position than that of individuals. It is able to implement its actions and claim its rights by force from individuals without an obligation on its part to file a lawsuit. These individuals, if they want to object, must resort to the judge to present their claims supported by the necessary arguments and documents. This means that the administration, equipped with evidence, stands in a better and easier position than the individual in the administrative case. It stands in the position of the defendant, while the weak individual stands in the position of the plaintiff who originally bears the burden of proof⁽²⁴⁾.

SECTION TWO

THE INFLUENTIAL ROLE OF MANAGEMENT PRIVILEGES IN PROVING THE ADMINISTRATIVE DISPUTE

The powers and privileges that the administration possesses, which are unfamiliar in legal closures, had an impact in one way or another on the administrative litigation, especially with regard to evidentiary procedures. The administration, with its privileges, is considered the strongest party in the lawsuit, which in most cases makes it take the position of the defendant, who is the easier position, while it may stand for the plaintiff's position. Thus these privileges affected the positions of the parties in the administrative case. This is what we will discuss in the following two sections as follows:

FIRST: THE INDIVIDUAL IS THE DEFENDANT AGAINST THE ADMINISTRATION

The individual stands in the face of the administration before the administrative judiciary, taking the position of the plaintiff in most cases. It is a difficult position, as he/she is stripped of evidence, as the papers are in the possession of administration.

The administrative judiciary does not move on its own to correct an erroneous administrative situation or decision, but rather the individual must resort to it. In this case the individual is considered the plaintiff, because he is the one who applied to the judiciary in the face of another opponent and proved to him the capacity in the case when initiating and filing the case⁽²⁵⁾.

The concept of the plaintiff is not limited to the natural person only, but it also means private legal persons such as private associations and companies. To acquire the status of the plaintiff, he/she

⁽²³⁾ Dr. Abdel Hakim Fouda, *Administrative Litigation*, University Press House, Alexandria, 2005, pg. 267, Dr. Hisham Abdel Moneim Okasha, *ibid*, p. 87

⁽²⁴⁾ Dr. Suleiman Al-Tamawy, *The General Theory of Decisions ...*, *ibid*, p. 633, d. Ashraf Abd al-Fattah Abu al-Majd, *ibid*, pg. 515

⁽²⁵⁾ Dr. Khaled Omar Abdullah Bagneed, *Administrative Judiciary and the Privacy of Administrative Litigation*, Dar Al Jamea, Aden for Printing and Publishing, Aden, 2011, p. 119, Dr. Ahmed Kamal Musa, *ibid*, pg. 93



must have the capacity to litigate, which is the person's ability to acquire the legal status with what it includes of procedural rights and duties, though determining the status of the individual as a plaintiff in administrative lawsuits is limited to two types of administrative disputes. The first is lawsuits for cancellation and compensation for administrative decisions, and the second is lawsuits for full jurisdiction regarding employee settlement disputes and administrative contract disputes⁽²⁶⁾.

The stand of the individual as a plaintiff in the administrative case is considered a difficult role compared to the role of the defendant administration, as it possesses the documents and data crucial to adjudicating the case, and enjoys unfamiliar privileges and powers. This situation results in an imbalance between the two parties to the litigation, which requires the administrative judge to play a positive role in the field of evidence in order to reduce the burden placed on the plaintiff⁽²⁷⁾.

SECOND: THE ADMINISTRATION AS A PLAINTIFF IN SOME ADMINISTRATIVE CASES

The administration may take the position of the plaintiff as an exception to the general rule, so it resorts to the judiciary by force or by choice. Thus, it is the plaintiff in the administrative dispute. This position is taken by the administration in some cases, which are considered an exception to the general rule that usually puts the individual in the most difficult position - the position of the plaintiff - that bears the consequences of this position with regard to administrative evidence. These cases relate to the following:

DISCIPLINARY CASES

It means those lawsuits that are filed against a public employee who breaches the duties of his job, positively or negatively, or performs one of the actions that are forbidden to him. Every employee who violates the duties stipulated by the laws, or deviates from the requirements of duty in the work of his position that he must perform himself, or fails to perform them with the caution, accuracy and honesty required, is considered to be at fault and a disciplinary action is initiated against him⁽²⁸⁾. The disciplinary action aims to impose disciplinary punishment on the employee when he deviates in the performance of his duty or for his conduct inconsistent with the duties of the public office. In these cases the administration takes the position of the plaintiff in the face of the employee who is a defendant. This results in the administration bears the burden of proving what it claims against the employee, because it possesses the administrative investigation as well as the penalty decision.

- IN THE EVENT THAT THE ADMINISTRATION DOES NOT HAVE THE PRIVILEGE OF DIRECT EXECUTION

⁽²⁶⁾ Dr. AmmarAwabedi, *The General Theory of Administrative Disputes in the Algerian Judicial System*, University Press Office, Algeria, 2009, p. 45

⁽²⁷⁾ Dr. Abdel Aziz Abdel MoneimKhalifa, *ibid*, p. 101

⁽²⁸⁾ Dr. Mr. Khalil Heikal, *Administrative Judiciary*, Dar Al-Nahda Al-Arabiya, Cairo, 2002, pg. 136



The privilege of direct execution of administrative decisions gives the administration the right to compulsory implementation of those decisions, which assumes the legitimacy of those decisions. However, the two conditions must be met, or at least one of them, namely, the existence of an explicit text that gives the administration that right and the emergence of a case of necessity that requires granting the administration this privilege. If none of the two previous conditions are met, the administration must resort to the judiciary as a plaintiff to obtain a judicial ruling for the compulsory implementation of its decision in the event that individuals refrain from implementing it.⁽²⁹⁾

SECOND TOPIC

MODERN MEANS OF PROOF AND THEIR AUTHORITY IN ADMINISTRATIVE DISPUTES

FORWARD AND SECTIONALIZATION

In light of the scientific development that is proceeding at an unprecedented pace, the world witnessed a development that had not been witnessed before by the communications revolution. Accordingly, electronic computers, faxes, telexes, mobile phones and other advanced devices appeared. Amongst them the most advanced was the Internet, which in its speed and ease of use surpassed all means of communication that preceded it.

This informatics, its continuous and rapid accumulation, and the massive information explosion led to the creation of modern means of communication. Without them no one on earth would have been able to accommodate this development and the huge amount of information, or even to be stored by the human mind or the pages of books. There must be an appropriate channel in which information is transferred and exchanged through. Hence, the Internet was the most important means of modern communication.

Among the most important modern means of evidence that have been widely used recently in administrative contracts is electronic writing. Most countries were keen to transfer the administration from paper to electronic management. Thus, most governments concluded their actions using electronic writing. This resulted in the adoption of the electronic signature as proof of electronic writing. Furthermore, the e-mail appeared as a means to facilitate the transfer of data between departments in a secure way, so it was adopted as a means of proof before the administrative judge.

This is what we discuss in this topic, which I divided into two themes as follows:

First theme: Electronic writing

Second theme: Electronic signature

⁽²⁹⁾ Dr. MajidRagheb Al-Helou, Administrative Judiciary, University Press, Alexandria, 2019, pg. 295, Dr. Ahmad Kamal al-Din Musa, *ibid*, p. 102



Third theme: e-mail

FIRST THEME

ELECTRONIC WRITING

Writing is one of the best methods of proof before the judiciary in general, and the laws of evidence in Egypt, Jordan and France considered it the best means of proof. Paper writing remained the sole means of proof, whether before the administrative judge, the civil judge or the criminal judge, and then electronic writing appeared as a result of the progress and development of technology. It was adopted in the field of civil evidence, then it was transferred to the administrative judge after governments adopted technology. With the appearance of electronic governments appeared, it was necessary to adopt electronic writing as a means of proof before the administrative judge.

The emergence of the means of technology resulted in the expansion of the concept of writing to include electronic writing in a broad way, so that the international community paid attention to this issue and adopted it in international agreements⁽³⁰⁾.

Here we discuss electronic writing in terms of its concept and the extent of its authoritative evidence before the administrative judge in two sections, as follows:

FIRST SECTION

INTRODUCING ELECTRONIC WRITING

FIRST: THE CONCEPT OF ELECTRONIC WRITING

Much legislation hastened to regulate electronic writing. The French legislator issued Law No. 575 of 2004 related to trust in the digital economy. Moreover, the French Minister of Justice issued Ministerial Resolution No. 674 of 2005 related to achieving some formalities in contracting through modern means of communication.

The French legislator previously made an amendment to the civil law under Law 230-2000, and its Article 1316-1. It was reformulated to read as follows: "Evidence in writing includes every notation of letters, signs, numbers, or any other symbol or sign of clear expressive understandable significance, whatever it is the support used to create it or the medium through which it is transmitted."⁽³¹⁾

With regard to the Jordanian legislator, he recognized electronic writing in various texts, as he amended the Data Law No. 37 of 2001 and added a new paragraph to Article (13), which stipulated

⁽³⁰⁾ Raymond Alexander, *La signature électronique une histoire Fondamentale du droit de la preuve*, Presses Universitaires D'AIX, Marseille, 2002, p 158.

⁽³¹⁾ Pierre Breese, *Gautier Kaufmane - Guide juridique de l'internet et ducommerce électronique* Vuibert, Paris 2000 p 299.



certified or signed computer outputs. The Jordanian legislator was not satisfied with adapting the general provisions of evidence to include the concept of writing. Rather, he issued a new law, which is the Electronic Transactions Law No. 85 of 2001. However, the law was contrary to what was expected, as the Jordanian legislator in this law did not deal with the definition of electronic writing directly, but he touched on it through his exposure to the term information message in Article (2). It stipulated “information that is generated, sent, delivered, or stored by electronic or similar means, including electronic data exchange, e-mail, telegram, telex, or telecopy“.

As for the Egyptian legislator, he issued Law No. 15 of 2004 regarding the organization of the electronic signature and the establishment of the Information Technology Industry Development Authority. The first article of this law defined electronic writing as “all letters, numbers, symbols, or any other signs affixed to an electronic, digital, or optical support, or any other similar means that gives a perceivable sign⁽³²⁾.”

The Egyptian legislator also defined the electronic editor as “a data message that includes information that is created, merged, stored, sent or received, in whole or in part, by electronic, digital, optical or any other similar means“.

Thus, it seems to us that the Egyptian and Jordanian legislators have differentiated between writing as a concept or as a condition in the document and the medium through which it is done, whether it is on a material or non-material support, whether it is a paper medium or an electronic medium, and this does not affect its evidentiary power. This principle is stipulated in Article 1316, the amendment of the year 2000 of the French law, because the support on which the writing is subject to consideration and there is no means to transfer it. This indicates that the legislator’s basic criterion with regard to the role of the support or the means of transmission is to preserve the writing. The examples of this means are paper, hard and soft disks, and among the means of manual or physical transmission papers, electronic transmission by electromagnetic waves or through computer networks, the Internet, or e-mail⁽³³⁾.

With relevance to jurisprudence, electronic writing is defined as all letters, numbers, symbols, or any other signs, which are fixed on an electronic, digital, or optical support, or any other similar means⁽³⁴⁾.

⁽³²⁾ Dr. Mohamed Mohamed Sadat, *The Authenticity of Electronically Signed Documents in Evidence*, Al-Jamaa House Al-Hodeidah, Alexandria, 2011, pg. 92

⁽³³⁾ Dr. Muhammad Hassan Qassem, *The Principles of Evidence in Civil and Commercial Matters*, Al-Halabi Publications, Beirut, Lebanon, 2003, pg. 211

MartenThessalonikos et Bensoussane ; informatique ; la signatureélectronique, première réflexions après la publication de la directive du 13mars 2000, *Gazette du palais*, 2000, p 200.

⁽³⁴⁾ Dr. Muhammad Nasr Muhammad, *The Electronic Evidence and Authoritybefore the Court*, “A Comparative Study”, Dar Al-KutubAl-Ilmiyyah for Publishing and Distribution, Beirut, 2013, pg. 58, Dr. Tharwat Abdel Hamid, *Electronic Signature*, New University House, Alexandria, 2007, p. 187



Thus, it seems to us that the legislation was keen to organize electronic writing and set a definition for it, but it does not differ from the jurisprudential definition.

Second: Conditions that must be met in electronic writing

Two conditions must be met for writing to be electronic:

A - WRITING SHOULD BE CLEAR

This means that the writing is understandable and written in letters or symbols that are known and understandable to the person who wants to invoke the electronic document that included this writing⁽³⁵⁾.

In order for the electronic writing to be authentic in proof, it must be readable with a clear and comprehensible indication. Although the electronic writing is visible in form, and is described as digital, it eventually takes on the screen of the device the traditional image of the accepted writing, and therefore it can be read and its content clearly understood⁽³⁶⁾.

Electronic writing is written with drawings and forms that are read directly and do not need a mediator, system or specific program to read it. It is suffice to look at it with the naked eye to decipher its meaning, reach its significance and say whether it is related to the source of the right that needs to be proven or not. It is done in the form of equations and algorithms that are implemented through the data entry and output operations through the computer screen. Moreover, reading and viewing it are not done directly, but this does not have an effect on its recognition as evidence before the administrative judge.

The principle is that the reading is done directly by the human being, but there is no objection in the case of electronic writing to the use of a computer that translates symbols and numbers into readable written letters⁽³⁷⁾.

b- It should be easy to retrieve

Ease of retrieval means the ability of the electronic directory to save the information written in it for a period of time so that it can be retrieved and used at the time of need⁽³⁸⁾. It is known that

⁽³⁵⁾ Dr. Abbas Al-Aboudi, Challenges of proof by electronic documents and the requirements of the legal system to overcome them, 1st edition, Al-Halabi human rights publications for publication and distribution, Lebanon, 2010, p. 141

⁽³⁶⁾ Muhammad Nasr Muhammad, ibid, p. 59 d. Abdel Nasser Mahmoud Mohamed Farghali, Scientific Evidence for the Crimes of Counterfeiting and Counterfeiting Traditional and Electronic Documents, "A Comparative Applied Study," Ph.D. Thesis, Faculty of Law, Cairo University, 2010, pg. 46

⁽³⁷⁾ Yves Pouillet; Mireille Antoine: Vers la confiance ou comment assurer le développement du commerce électronique, Collection Leg Presse, Paris, 2001, p 452.



electronic writing is recorded on an electronic medium and is also preserved on recording discs or magnetic tapes. These media or supports are characterized by a degree of sensitivity that makes it vulnerable to rapid damage when any technical defect occurs in the preservation and storage system. Therefore, it is less able than paper media to retain writing for a long time. However, the practical reality resulted in the emergence of modern technology techniques that handle this technical defect. Now it is possible to keep electronic writing for periods of time that may exceed the capacity of papers⁽³⁹⁾.

There are several ways to save electronic writing:

- Save on magnetic disks such as (CD-ROM)
- Save on (pdf): It is a program that converts electronic writing in the form of (Word) into a pattern that is difficult to modify.
- Through the electronic certification service providers.
- Keeping data in electronic boxes can only be opened with a keyword.

The French legislator stipulated this condition in the consumption law, where Article 134-2, added to Law No. 575 of 2004, stipulates that “if the contract was concluded electronically and its value equals or exceeds the legal quorum determined by a decree issued by the State Council, the professional contractor is obligated to keep the document that prove this contract for a period determined by this decree. Moreover, the professional party must guarantee to the contracting party that he enters this bond at any time he wants⁽⁴⁰⁾.

Furthermore, the Jordanian Electronic Transactions Law stipulates the electronic registration condition⁽⁴¹⁾:

1. The information contained in the register should be able to be retained and stored, so that it can be referred to at any time.
2. The possibility of keeping the electronic record in the form in which it was created, sent or delivered, or in any form that facilitates proving the accuracy of the information contained in it when it was created, sent or delivered.

⁽³⁸⁾MusaedSaleh, The Role of Ordinary Bonds, “A Comparative Study,” a note submitted to complement the requirements for obtaining a master’s degree in private law, Faculty of Law, Middle East University, 2012, pg. 35

⁽³⁹⁾ Dr. Muhammad Nasr Muhammad, *ibid*, p. 60

⁽⁴⁰⁾A decree was issued by the French Council of State under No. 137 on February 25, 2005, specifying the amount at 120,000 euros, and specifying the period of keeping the electronic writing for ten years, starting from the date of concluding the contract in contracts where execution is immediate. See dr. Abed Fayed Abdel Fattah, *Electronic Writing in Civil Law*, Helwan Law Journal for Legal and Economic Studies, Issue 18, January, 2008, p. 66

Jean Marc Mousseron, *Technique contractuelle*, Edition Francisc, Lefebvre, 2^{ème} édition, 1999, p 13

⁽⁴¹⁾See Article 7 of the Jordanian Electronic Transactions Law No. 85 of 2001



SECTION TWO

THE AUTHORITY OF ELECTRONIC WRITING IN EVIDENCE BEFORE THE ADMINISTRATIVE JUDGE

Electronic means are considered questionable with regard to proof, unless technical security is provided for these means, to ensure the safety of electronically transmitted information.

For the authenticity of electronic writing to be valid, several conditions must be met⁽⁴²⁾:

- The identity of the person must be confirmed: it must be attributed to its owner, in order to give the legal authority to the electronic documents, and to give the electronic document authoritative evidence.
- The site alone is the sole over the electronic medium.
- The possibility of detecting any modification or alteration in the data of the electronic editor.

THE SECOND REQUIREMENT

ELECTRONIC SIGNATURE

Writing, whether in electronic form or on a material support, is not a complete evidence of proof unless it is signed. The legislation has explicitly recognized the electronic signature as a complement to the recognition of the authority of electronic writing, in line with the inventions of the information era that introduced modern means in concluding contracts and signing them electronically.

This is what we will discuss in this theme in two sections, as follows:

FIRST SECTION

DEFINITION OF ELECTRONIC SIGNATURE

FIRST: CONCEPT OF ELECTRONIC SIGNATURE

The French legislator defined electronic signature in Article 1316 of the Civil Code as “the signature necessary to complete the legal act, identifying its owner, and expressing the parties’ consent to the obligations arising from it“⁽⁴³⁾.

Moreover, the Egyptian legislator also defined the electronic signature as “what is placed on an electronic document and takes the form of letters, numbers, symbols, signs, or other things. It also

⁽⁴²⁾See Article 18 of the Electronic Signature Law No. 15 of 2004

⁽⁴³⁾Philippe Delbecque, Jean-Daniel Bretzner, Thomas Vasseur, Droit de la prevue, Dalloz-2007, n 27, p1906



has a unique character that allows identifying the signer's identity and distinguishes him from others⁽⁴⁴⁾.”

The Jordanian legislator defined it as a set of data that takes the form of letters, numbers, signs, etc. It is included in an electronic, digital, optical form or any other similar means in an information message, added to it, or linked to it. It has a character that allows identifying the person who signed it and distinguishing him from others in order to sign it and for the purpose of approving its content“⁽⁴⁵⁾.

A part of the jurisprudence defined it as “following a set of procedures or technical means that can be used through code, numbers, or ciphers, with the intention of producing a distinctive mark for the owner of the message that was transmitted electronically“⁽⁴⁶⁾.

Another part defined it as "a specific procedure that the person whose signature is intended to sign on the electronic document, whether this procedure is a form, number, specific electronic sign, or a special code, has a unique character that allows identifying the identity of the signer and distinguishes him from others. Most importantly, the number or the code must be kept safe and confidential, preventing its use by others, and giving confidence that the issuance of this signature indicates that it was indeed issued by its owner⁽⁴⁷⁾.

Furthermore, a part of the French jurisprudence defines it as “a set of electronic procedures that are connected to an electronic document and allow identifying the identity of the person issuing these procedures to confirm the truth of the data mentioned in the document and his commitment to it⁽⁴⁸⁾.”

Second: Electronic signature forms

The electronic signature takes two forms⁽⁴⁹⁾

1- The numerical signature (La signature numérique)

The numerical signature is called a "key based signature". This technology provides the electronic document with a cryptographic signature that can identify the signatory, time of signature, and other information about him/her.

2- The biometric signature (Signature biométriques)

⁽⁴⁴⁾ Refer to Article 1/c of the Electronic Signature Law No. 15 of 2004

⁽⁴⁵⁾ Refer to Article 2 of the Jordanian Electronic Transactions Law No. 85 of 2001

⁽⁴⁶⁾ Dr. Naim Maghabghab, Computer Program Protection, Al-Halabi Human Rights Publications, Beirut, 2006, 113.

⁽⁴⁷⁾ Dr. Manani Farah, Modern Evidence of Law in Law, Dar Al-Huda for Printing, Publishing and Distribution, Algeria, 2008, p. 88

⁽⁴⁸⁾ Trudel, G. lefvre ET S. parisien, "la signature dans l'échange informatises au Québec " les publications du Québec, 1993, p.62.

⁽⁴⁹⁾ Thierry Piette-coudol; échanges électroniques Certification etsécurité, édition litec ,2001, p125-126.



The biometric signature depends on defining a special pattern in which the hand of the person signing moves during the signature. An electronic pen is connected to a computer, and the person signs using this pen that records the movements of the person's hand during the signature as a distinctive feature of him/her, taking into account that each person has a specific behavior during the signature.

SECTION TWO

THE AUTHENTICITY OF ELECTRONIC SIGNATURE IN EVIDENCE BEFORE THE ADMINISTRATIVE JUDGE

Contemporary legislation has given special importance to the subject of proof by means of modern technology. It has given authenticity to the electronically signed document, provided that the specifications and requirements that guarantee the identification of the signer's identity and his commitment to the content of the document linked to it are taken into account, as well as enabling the signatory to keep his signature and control it exclusively. Moreover, the signatory has the appropriate means to detect any modification or tampering with it. This task is undertaken by entities established for authentication or to provide electronic certification service. They operate under license and under the supervision of the executive authority. They also provide an electronic certificate to confirm the identity of the signatory, his description, the validity of his signature, and the attribution of the data message or contract to its owner. Accordingly, the electronic signature must be linked to electronic certificate which is approved and valid electronic document issued by a licensed electronic certification authority.⁽⁵⁰⁾

When the electronic signature fulfills all the controls stipulated in the electronic signature law, it becomes authoritative. The electronic signature is within the scope of the administrative transactions has equivalent authority prescribed for signatures in the provisions of the Evidence Law in civil and commercial articles, when the technical and technical controls are observed.

THIRD THEME

E-MAIL

The idea of e-mail is based on the exchange of electronic messages, including files, drawings, pictures and papers, by sending them from the sender to one or more persons, using the e-mail address of the addressee from the traditional mail address.

Our present time has witnessed a remarkable development in the field of communications, as the whole world is going through what is called the communications revolution, which included various fields of life in terms of administrative, commercial and civil dealings. Modern means of communication in all its forms and types are considered among the most prominent modern means, and its use has become very large, especially in people's transactions. These means have imposed

⁽⁵⁰⁾Dr. Muhammad Hussein Mansour, pg. 288



themselves in dealing on a large scale, including all different areas of life, which made them the modern alternative to contracting by electronic correspondence.

The authoritative e-mail in proving administrative cases has become one of the important topics, as it is one of the most important modern means of communication because of its importance in our time, given that the world is witnessing a rapid development in the use of modern technological means.

We discuss here the subject of e-mail as one of the most important of these means in two sections as follows:

FIRST SECTION

INTRODUCING E-MAIL

One part of the jurisprudence defined e-mail as “a machine for the asynchronous electronic exchange of messages between computers”⁽⁵¹⁾, and another consider it as “those documents that are sent or received by an e-mail communication system and include brief notes of a real formal nature, and it can accompany attachments like word processing and any other documents that are sent attached with the same message”⁽⁵²⁾. A third part defined it as “a repository for keeping papers and private documents in the user’s mailbox, provided that this box is secured not to be accessed through the encryption or password and other technical protection techniques”⁽⁵³⁾.

The French law on trust in the digital economy issued on June 22, 2004 defined it as “every message, whether it is text or audio, or with images or sounds attached, that is sent over a public telecommunications network and stored at one of the servers of that network or in the recipient’s terminal equipment so that the latter can restore it”⁽⁵⁴⁾.

Regarding electronic signature, the Egyptian Law No. 15 of 2004 was devoid of any definition of what electronic mail is.

Accordingly, we can say that e-mail is the message that includes information that is originated, merged, stored, sent or received, in whole or in part, by electronic or digital means.

⁽⁵¹⁾Dr. Mohamed El-Sayed Abdel-MoatyKhayal, *The Internet and Some Legal Aspects*, Dar Al-Nahda Al-Arabia, Cairo, 2001, p. 134

⁽⁵²⁾ Dr. Abd al-HadiFawzi al-Awadi, *Legal aspects of e-mail*, a research published in the Arab Lawyers Network, the Law Library, Cairo, p. 23

⁽⁵³⁾ Dr. Abdel Fattah BayoumiHijazi, *Electronic Government and Its Legal System*, Volume One, Dar Al-Fikr Al-Jami'i, Alexandria, 2004, p. 172

⁽⁵⁴⁾ Le Fait que la notification électronique soit censée être faite au domicile du destinataire n’est pas unobstacle à la notification électronique puisqu’il est estimé par une partie de la doctrine qu’il y a une assimilation parfaite entre domicile et adresse électronique.

Voir dans ce sens : P.-Y.Gautier, « L’e-mail » in «Clés pour le siècle».UniversitéPanthéon-Assas ;Paris II, Dalloz,2000,p.369;

<http://www.univ-paris1.fr/fileadmin/diplôme-droit-internet/02-03-Kessler-Delphinemémoire.pdf>.



SECTION TWO

THE AUTHENTICITY OF THE E-MAIL IN EVIDENCE BEFORE THE ADMINISTRATIVE JUDGE

In the beginning, we say that the e-mail message appended with an electronic signature enjoys full authority of proof no less than the authority of the customary document, so that the judge must rely on the electronic message as complete evidence of proof.

With regard to e-mail messages that are not appended with an electronic signature, they are considered to have the power of customary documents in terms of proof, unless their signer proves that he did not send them and did not assign anyone to send them. Moreover, telegrams also have this power if their original delivery in the Postal Department is signed by the sender.

If we end up considering e-mail messages as proof, but the authenticity of this consensual evidence remains subject to the discretion of the judge, in terms of whether it is complete or incomplete evidence. The rules of the authoritativeness of written evidence are related to public order, given that these rules are related to the judiciary's performance of its function. This consent does not have to be to stand in the way of the judge's exercise of his discretionary power to assess the authority of the evidence presented to him. This means that the e-mail message is not considered in any case conclusive evidence in the dispute, but rather its authority in proof is subject to the judge's discretion, as it is a relative authority, so that the subject judge can always investigate no tampering or distortion occurred in the electronic message. If he is not convinced, he can disregard this message⁽⁵⁵⁾.

Thus the e-mail message is not considered in any case conclusive evidence in the dispute, but rather its authority in proof is subject to the discretion of the judge. It is a relative authority, so that the subject judge can always investigate no tampering or distortion occurred in the electronic message. If he is not convinced, he can refuse this message⁽⁵⁶⁾.

CONCLUSION

At the end of this study, we conclude that modern technology gave birth to many tools that are now used by various governments in their daily dealings, whether with employees or with individuals, so these tools have become one of the most important evidences before the judge.

As for the Jordanian law and the Egyptian law, they followed the approach of the French legislator, who included these means in the French civil law, and then in a separate law. The Egyptian legislator organized the electronic signature, and the Jordanian legislator also issued the electronic transactions law.

⁽⁵⁵⁾Dr. BouzianeSouad, *Methods of Evidence in Administrative Materials*, Dar Al-Huda for Publishing and Printing, Algeria, 2015, pg. 157

⁽⁵⁶⁾ Dr. Manani Farah, *Modern Proofs of Law in Law*, Dar Al-Huda for Publishing and Distribution, Algeria, 2008, pg. 79



Although the evidence before the administrative judge enjoys peculiarity in terms of the absence of an independent law regulating it and in terms of the nature of the legal status of the administration, the administrative judge has recently accepted such evidence. Moreover, the legislation has given electronic writing and electronic signature absolute authority when the technical controls are observed. As for e-mail, it has a relative authority.

RESULTS

The study reached several results:

- 1- The Jordanian, Egyptian and French legislators announced their adoption of modern means of communication in administrative actions. They made equality those means equivalent to the traditional means in the field of evidence before the administrative judge.
- 2- The Jordanian legislator has given the modern means of proof an absolute authority in proof when the technical and legal controls are taken into account.
- 3- The necessity of qualifying the administrative officers on how to use the means of modern technology, and how technically to deal with the electronic content used in evidence before the administrative judge, and not to rely on companies issuing electronic signature certificates.
- 4- Evidence by using electronic writing, electronic signature, and e-mail enhances confidence and security in administrative transactions when legal controls are observed, as well as identifying competent authorities to monitor them.

RECOMMENDATIONS

- 1- We recommend that the Jordanian and Egyptian legislators work quickly to issue a special law regulating evidence before the administrative courts.
- 2- We recommend the Jordanian and Egyptian legislators to issue special legislation regulating the issue of evidence by all modern technological means before the administrative courts.
- 3- We recommend taking into account the technical nature in the field of modern means of communication that are used for proof by obliging the parties to preserve the electronic material for a period of not less than 10 years, following the example of the French legislator.
- 4- We recommend that the legislation regulating modern evidence must ensure that the party in those papers access it with the registrar at any time and has access to the content of those electronic papers.

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ENGLISH ABSTRACT

MODERN MEANS OF PROOF IN ADMINISTRATIVE CASES:

A COMPARATIVE STUDY

FRANCE - EGYPT - JORDAN

Modern means of communication have become used in all walks of life, and governments have hastened to include them in the work of the administrative authorities. Despite the peculiarity of evidence in the field of administrative disputes, these methods cast a shadow over the methods of proof before the administrative judge.

Legislations have given modern means of communication authority before the administrative judge, but after observing some legal and technical controls that guarantee the attribution of the disposal to the one who did it.