

THE ENFORCEMENT OF ELECTRONIC ADMINISTRATIVE DECISION AND THE EXTENT OF ITS APPLICATION IN PALESTINE AND JORDAN

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ABSTRACT

Electronic management means a set of administrative activities that depend on the internet at all levels of public administration. The transformation of the procedure from paper-based into electronic pillar has impacted the administrative decision. Therefore, the administrative decision has become issued by electronic procedures and relies on the electronic pillar based on paper or document. This led to the emergence of new legal terms, such as the electronic administrative decision. However, several legal questions have arisen about the legality of electronic administrative decisions and their legal effects. And what is the moment in which the electronic administrative decision is considered to have been issued and effective? This paper aims to demonstrate the legality of the application of the electronic administrative decision in Palestine and Jordan. To achieve the research objectives, a qualitative legal research approach has been adopted. The primary and secondary data have been both utilized in this research to help answer the research question. Findings show that the Palestinian and Jordanian legislation has not prevented the administration from expressing its will by using modern technological means; also, the legislator has not required the issuance of the decision to be written or verbally. The authors recommend activating the role of the Supreme Court of Justice. Besides, make some amendments to the Palestinian decision No. 15 of 2017 regarding electronic transactions and Jordanian law in the Electronic Transactions Law No. 15 of 2015 to keep pace with this development.

Keywords: *Electronic Administrative Decision, Electronic Administration, Public Administration, Administrative Decision, Palestine and Jordan.*

INTRODUCTION

In the exercise of its administrative activities, the public administration is represented in implementing laws, managing public facilities, and maintaining public

security, which has many privileges of public authority. The administrative decision is the most critical privilege for the administration to start its administrative activity. Through the administrative decision, new legal statuses for individuals are created, modified, or cancelled. This administrative decision shall not affect the administration or the individuals except its enforcement date (Sabbidine, 2021).

However, the developments in administrative life require legal experts to research new ideas and legal studies that are consistent with the fact that the rules of administrative law are flexible and sophisticated. And one of the most prominent terms recently used in legal studies is the term electronic management. Moreover, no legal obstacle prevents the management from issuing its decisions electronically as long as it targets the public interest (Brown, 2005).

Electronic management means the group of governmental activities that depend on the internet and electronic communications, through all layers and levels of the public management in the state to provide all services to individuals in various fields with ease. This requires the electronic management to conduct its legal actions entirely through modern communication systems, which has led to the emergence of new legal terms in this field, such as the electronic administrative decision. In addition, the issuance of the electronic administrative decision in the form of the electronic document saved on the computer or the phone leads to the possibility of realizing the incident of electronic enforcement for the electronic administrative decision. The explanation lies in the fact that the administration's decision to rely on electronic means leads to its reliance on electronic means in achieving knowledge of the content of the administrative decision for the individuals addressed with the decision (Al-Salamat, 2013).

Several legal questions have arisen about the safety of the electronic administrative decision in legal terms, the extent to which it is recognized, or its legal effects. In addition, the means of its enforcement, and the mechanism of invoking it, either against the administration or individuals and determining when the electronic decision is deemed to have been issued or effectual, is it the moment the public administration electronically signs it. Or is it the moment of receiving the electronic message from the concerned person?

Moreover, some questions may arise about the enforcement of the electronic administrative decision and need answers, especially since no disputes or cases are presented to the administrative judiciary in Palestine or Jordan. This study may be the nucleus for finding answers to these questions, given the lack of a specialized Arab legal library for research in this subject. Therefore, this paper will fill a gap in the literature by adding knowledge about the implementation of electronic administrative decisions and their application in Palestine and Jordan.



METHODOLOGY

The authors have been purely adopted doctrine legal research using a qualitative approach. The primary and secondary data have been both utilized in this research to help answer the research question. The primary data is the laws, legislations, judicial rulings. On the other hand, secondary data include journals, books, and online sources such as websites, blogs, magazines, newspapers, dictionaries, encyclopaedias, and thesis (Al Amaren, 2021).

DISCUSSION AND ANALYSIS

This article will discuss the legality of applying the electronic administrative decision in Palestine and Jordan and the general principles governing the enforcement of administrative decisions. In addition, the legal basis of their existence and the means for the electronic administrative decision.

1. General Principles Governing the Implementation of Administrative Decisions

Given the importance of the enforcement of administrative decisions, the administrative judiciary has approved general principles and theories to achieve a kind of balance between the privileges of the administration in its management of public facilities and the interests and rights of individuals. Among the most important of these principles are the basic principle is the enforcement of administrative decisions in confronting the administration from the date of their issuance unless they are suspended on a condition or added to a term. And the basis for that is its knowledge or the assumption that it has been aware of its decisions since its issuance. Thus, the legal existence of the administrative decision is essential to know whether it is legitimate or not and the extent to which the administrative decision is enforced against the administration after its issuance (Kanaan, 2012).

Administrative decisions are not being applied retroactively. Justice and the stability of legal statuses are the basis of this principle. Justice requires that those who make administrative decisions not prejudice legal statuses that were made before the issuance of these decisions, whether by amendment or cancellation and to say otherwise leads to instability in society. The principle of non-retroactivity in administrative decisions is based on the non-prejudice of acquired rights (Al-Barzanji, 2000).

However, down to the public interest requirements, exceptions to this principle have been approved, either by express text from the legislator, in implementation of the cancellation ruling, or that those decisions by their nature include some retro (Okasha, 2007).

The basic principle is that administrative decisions will apply to individuals after they are published. The basis for this principle is to inform individuals of their new legal status that was created by the decision. Therefore, they are not invoked in their confrontation unless their knowledge has been verified by one of the means specified

by the legislator to know the administrative decision. It is not sufficient for the administrative decision to be enforced in the face of those addressing it. It must be published indeed, fulfilling all its elements. In addition, individuals shall know this decision (Al-Zunaibat, 2003).

2. Definition of the Electronic Administrative Decision and its Characteristics

Both the Palestinian and Jordanian legislators have not addressed the definition of the traditional administrative decision in general. In contrast, the Supreme Court of Justice in Palestine and Jordan has defined that *"The traditional administrative decision is the administration's disclosure about its binding will within the power it has under the laws and regulations to create a specific legal status whenever it is possible and legally permissible, and it is motivated by the public interest."* (Hamada, 2004).

However, the administrative law jurists have criticized the previous judicial definition, especially concerning the term disclosure, which is not applied to adverse and implicit decisions for its lack of explicit expression as is customary for positive decisions, as well as for not including all forms of the legal impact of the traditional administrative decision. It is also contained elements of the decision and its validity conditions related to its legality, not its essence. In addition, there is no doubt that the previous definition has not considered the electronic administration decision, with some contemporary countries adopting the electronic management system (Al-Buhaisi, 2006).

Moreover, some researchers in the field of modern public administration have worked hard to define a definition of the electronic administrative decision, as the researcher, Fuad Yousef Al-Jubouri, has defined the electronic administrative decision as *"The use of the responsible authorities for information systems to adopt one alternative from among the alternatives presented."* (Al-Jubouri, 2011).

The researcher Alaa Abu Ahmed has defined the electronic administrative decision as: *"The public administration receives the electronic request on its website and discloses its binding desire to issue the decision, sign it electronically, and notify the concerned person on his e-mail, with the power it has under the laws and regulations to create a specific legal effect that is legally permissible and possible and in the public interest."* (Ali Baz, 2009).

Regarding the first definition, the authors assume that it dealt with the electronic administrative decision according to its meaning developed in public administration. In contrast, the second dealt with the concept of the electronic administrative decision according to what the jurists and administrative judiciary settled on, which is concerned us. In addition, it is taken on the second definition that it depends on the power of the administration in making the electronic administrative decision to receive an electronic request by individuals, which is not consistent with

what is established regarding the administrative decision as it is a privilege in the hands of the administration alone and an expression of its sole will. It is not dependent in its issuance on the will of individuals (Amr, 2001).

It is also narrowed the scope of electronic administrative decisions. It limits them only to those issued at the request of individuals. However, some decisions are not issued upon request, such as deduction decisions and removal from public office. It is included what is related to the formalities of the electronic administrative decision by referring to the electronic signature, as well as what is related to its implementation when it is referred to the notification by e-mail, in addition to that this is led to linking the electronic administrative decisions to the individual decision, not to the organizational (Hussein Amin, 2005).

In light of the foregoing, the authors define the electronic administrative decision as *"The electronic document that expresses the binding and sole will of the administration intending to have a specific legal effect."*

The authors have concluded in this point by saying that the issuance of the electronic administrative decision in the form of the electronic document saved on the computer is led to the possibility of realizing the incident of electronic access to it. The explanation of this lies in the fact that the administration's decision to rely on electronic means is led to its reliance on it also to achieve knowledge of the content of the administrative decision regarding the individuals addressed by the decision. (Alshawabkeh)

To clarify what is meant by the electronic document, the authors have pointed out that there are other terms synonymous with it, whether in the relevant laws or in the literature of jurists, where the term electronic document, electronic record, electronic editor, and electronic pillar are used. The Palestinian and Jordanian Electronic Transactions Law has used the term electronic record, where it is defined as *"A group of information that in its entirety, constitutes a description of a situation related to a person or thing, and which is created, sent, received, or stored by electronic means."* (Palestinian and Jordanian Electronic Transactions Law, Article 1)

Therefore, the authors have confirmed that the electronic document is not different from the paper in its content. Both contain information or data related to a specific situation, person, or subject. But they differ in terms of the preparation mechanism and how to use it. The document in its new form is prepared using electronic procedures, and it is used through electronic reality by its parties in the way they want.

Considering the work that the public administration issues as an administrative decision have required the availability of a set of characteristics that are necessary for both the traditional and electronic administrative decision to distinguish them from other administrative actions, as follows;

On the one hand, the administrative decision is distinguished as an administrative action issued by the public administration, whether central or decentralized.

Therefore, the decision that private law person issue is not considered an administrative decision, and it is required that the authority that is issued the decision be national, not foreign. With the issuance of the administrative decision by the public administration by relying on electronic means, it is sufficient to achieve the first characteristic of the administrative decision. This does not affect its new composition or a new issuance method because what matters is who made the decision. Also, it is outside the scope of electronic administrative decisions issued by persons of private law through their websites, as is required in the electronic administrative decision being issued by a national administration, not a foreign (Amr, 2004).

On the other hand, the administrative decision is distinguished by a unilateral action resulting from the will of the public administration alone. It is issued by it explicitly or implicitly without any other will participating with it despite the diversity of its parties (Shehadeh, 1999). Undoubtedly, the electronic administrative decision is issued by the sole will of the administration, which is embodied in its sole by preparing it electronically, signing it, and issuing it by the same means without any other will participating with it.

On the third side, the administrative decision is characterized as a legal action through which the administration seeks to arrange a public or private legal effect, depending on whether the decision is organizational or individual, and this effect is to establish, amend or cancel a legal status (Abdo Hodeid, 2012).

Accordingly, as long as the administration intended to have a specific legal effect on its decision issued by electronic means, the legal action of this electronic decision is fulfilled.

By searching on the website of the Palestinian Personnel Bureau, the authors have found that the Palestinian Personnel Bureau administration had issued most of the appointment decisions between 2015-2020 through electronic procedures. These decisions have arranged their legal effect by including the final results of applicants for government jobs, in the light of which were made announcing the appointees that they have assumed the positions that have assigned to them, which is raised the minds of the validity of these procedures in achieving knowledge of the content of the electronic administrative decision and calculating the deadline for the challenged by revocation in it (Palestinian General Personnel Council, <http://www.diwan.ps/ar>, 2021).

In addition, based on what the judiciary has decided upon, electronic material acts do not achieve legal work status. They cannot be considered electronic administrative decisions due to their lack of any legal effect. For example, the electronic circular issued by the Palestinian Ministry of Transport and Communications regarding licensing of occupations related to vehicles and land settlement announcements on the website of the Palestinian Authority (Ministry of Transport and Communications, www.mot.gov.ps, 2020).

Therefore, the administrative decision shall be at the final status to be challenged by revocation, which is what the Palestinian and Jordanian legislators have referred to and what was confirmed by the Supreme Court of Justice in Palestine and Jordan (Shabir, 2015).

The Supreme Court of Justice has affirmed in particular that “Since certain conditions shall be met in the administrative decision that can be appealed before the Supreme Court of Justice, and among these conditions, the legal action challenged in the case of cancellation shall be a final administrative decision. The jurisprudence and the administrative judiciary have settled that the finality of the administrative decision can be implemented without the need to take any subsequent action, and the administrative decision is not considered final if it is required the issuance of another decision or permission from another entity. In this case, the challenged decision before the court is considered an executive notification, meaning that it is considered an indefinite preliminary procedure...” (Judgment of the Supreme Court of Justice, Palestine - Ramallah, in Administrative Case No. 274 of 2009)

Moreover, the final decision is intended to be enforceable just because it is issued without the need for ratification by another authority, which is prevented it from being discussed before a higher authority and is not contradict the final decision of the administration to be able to withdraw it, or for it to be suspended or temporary. Because the lesson in all cases is the implementation of the decision and the final arrangement of its effects. And the criterion determining the final decision or not is according to whether it is required ratification of the decision or not (Hamadeh, 2004).

For the final status to be achieved in the electronic administrative decision, it shall be issued by the authority that can grant it this status under what the legislator is determined in each decision separately. For example, the municipal council’s decision to dispose of the municipality’s property for more than three years is not considered final unless approved by the Minister of Local Government. Therefore, this decision is considered valid if it is published on the website of the ministry, not the municipality, or notified through the e-mail of the concerned person (Palestinian Local Authorities Law No. 1 of 1997, Article 20).

The authors have summed that the legal description that accompanies the electronic administrative decision proceeds through the passage of the decision in two phases, namely its issuance and application. In the first, the decision shall be based on the legal basics that are allowed this. It should not constitute a departure from the typical nature of the existing legal system, which is what the electronic administrative decision is acquired legitimacy and legality of its existence by issuing it from the same original authority that the administration is enjoyed in this regard normal circumstances. And what comes after that comes to the implementation phase that is required the decision to come into existence depending on its principles and conditions of validity in the manner required by the legislator, which is applied to all decisions.

When the electronic administrative decision is found in this way, it is acquired the legitimacy of its existence and the validity of its application.

Undoubtedly, the transition of administrative work to electronic reality inevitably entails extending the scope of the public interest to this reality with its considerations and known weight in administrative law (Al-Khader, 2006).

The previous saying is strengthened in light of the role played by the public interest itself in establishing the existence of this development and licensing the administration to apply the electronic management system because of the proper and regular procedures that are based on, there is no way for corruption and bureaucracy to penetrate the broad image that we are witnessing in the paper-based administrative work, and as long as this is the case, it shall remain present in the light of this application. The various aspects of work prevail within this new system (Ata Sadah, 2009).

3. The Electronic Administrative Decision

This part is divided into two points: the legal basis for the electronic administrative decision, and the second is the legal existence of the electronic administrative decision.

3.1 *The Legal Basis of the Electronic Administrative Decision*

Because of the evolution of the information revolution and the advancement of modern means of communication, it was necessary for governmental administrations to keep pace with this development, especially in the field of administrative law that is governed most of its activity and whose main features are flexibility and development, to accommodate the developments revealed by the legal science. Reality is required governmental administrations to ensure good service delivery to the public by performing the required service quickly and easily through the so-called electronic governmental administrations. According to this development, government administrations have tended to take advantage of technical progress in electronics, software, and communications by using these new technologies to accomplish and manage their business, which leads to speed in completing these transactions and saving costs and efforts (Hegazy, 2003).

Most public government departments have established websites on the internet to provide their services to the public. For example, sites of municipalities, enabling them to collect contributions from commercial institutions in their area and issuing commercial licenses, building permits, and other services provided by the municipalities and their nature is accepted their completion through the internet (Al-Adwan, 2013).

Perhaps the most prominent of the above in this field is the ability of the electronic public administration to take its decisions electronically, which has significant results, initially related to the concept of the electronic administrative

decision, its legal existence, means of publicity, and its implementation in the right of management and individuals, and thus invocation of it (Al-Barzanji, 2000).

In fact, nothing in the Palestinian or Jordanian legislation has prevented the administration from expressing its general will by using modern technological means, as long as it is achieved the purpose of this expression, primarily since the administrative decision is issued using these means includes all elements of its existence and its pillars, by not violating the law, and its issuance in a particular form (Abu Al-Layl, 2000). And it is included its reason (2000). and the administrative authority with jurisdiction to issue it (Abdel-Razek Al-Baz, 2015).

The public interest should be achieved, noting that these elements of the administrative decision may be available in the electronic administrative decision, especially since the legislator has not required the issuance of the administrative decision in written or verbal. In addition, the legal provisions accommodate the decision being issued electronically (2015).

It should also be noted that Decision No. 15 of 2017 regarding Palestinian electronic transactions, Article (1) is defined electronic transactions as *"Transactions that are concluded or executed in whole or in part by electronic means."*

The Jordanian legislator in Article (2) of the Electronic Transactions Law No. 85 of 2001 is defined electronic transactions as *"A procedure, or a set of procedures, between two or more parties to create obligations on one party or mutual obligations between more than one party and related to a business or a civil obligation or a relationship with a governmental department."*

Article (4) of Decision No. 15 of 2017 regarding Palestinian electronic transactions is stipulated that *"Electronic transactions and signatures are applied about the judicial jurisdiction, with the same provisions that apply to written transactions."*

Article (4) of the Jordanian Electronic Transactions Law is stated that the provisions of this law shall apply to the following *".... Electronic transactions approved by any government department or official institution in whole or in part"*

Therefore, the authors have confirmed no legislative objection to the administration issuing its decisions electronically when meeting their legal requirements, including pillars and elements. This necessarily entails adjusting some Palestinian and Jordanian laws and regulations to keep pace with this development, especially laws relating to signature and proof, because the problem may arise about electronic signature and proof.

3.2 The Legal Existence of the Electronic Administrative Decision

The Palestinian and Jordanian legislators have not defined the administrative decision in general. Since then, the Supreme Court of Justice has been competent to consider disputes relating to the administrative decision. Therefore, a definition of the

concept of administrative decision has become a binding duty on the judiciary (Al-Qudah, 1994).

In addition, the Supreme Court of Justice in Palestine and Jordan has defined the administrative decision by mentioning that *"The experts of the Supreme Court of Justice has settled on defining the administrative decision as the administration's disclosure of its binding will with its authority under the laws and regulations with the intent to create, change or amend a specific legal status whenever possible and legally permissible..."* (1994).

Moreover, the Egyptian State Council's judiciary has settled on defining the administrative decision as *"The administration's disclosure with its binding will, from its power under the laws and regulations with the intent to cause a certain legal effect whenever it is possible and legally permissible, and the motive was for the public interest."* (El-Meligy, 2000).

Regarding the definition of jurists to lay down a specific definition of the administrative decision, a controversy has arisen among jurists, where some of them include the definition of the elements of the existence of the administrative decision. Some of them enter the conditions for the validity of the administrative decision within the framework of this definition. Thus, no definition of the traditional or electronic administrative decision was found in the legislation, considering that the electronic administrative decision is the result of the tremendous technological progress concerning the legal existence of the electronic administrative decision. And since most jurists have not stipulated a specific form to put the administrative decision in it, it is possible to disclose the will of the public administration in any way, including the use of the electronic system (Abu Al-Layl, 2004).

In addition, writing the administrative decision can be carried out traditionally or electronically through a computer. The writing can be sent to the person addressed to him through electronic means by e-mail (Al-Qubeilat, 2007).

Based on all of the above, if a person applies to fill the job electronically, and the administration issues its decision and announces it to the candidate or publishes it online to the candidates, or it sends it to the candidate's website, then it has made clear to its binding will with the intent to cause a particular legal effect is to establish a legal status it was not there before for the employee performing the job (Shabir, 2015).

The existence of an electronic administrative decision can be proven by the legal methods determined by the legislation. Considering that the administration issued the electronic administrative decision using the technical means of communication, it is straightforward to prove the issuance of this decision (Al-Baz, 2015).

The Palestinian legislator has stated in Article (9) of Decision No. 15 of 2017 regarding Palestinian electronic, that *"Electronic transactions, records, and signatures have a legal effect and are considered valid and effective, like to written documents,*

following the provisions of the legislation in force. In terms of its obligation to its parties, or its validity in the proof, the photocopy on paper from the electronic data message is considered an argument to all, unless one of the parties contested it, in which case the photocopy is reviewed. On the original."

In addition, Article (6) of the Jordanian Electronic Transactions Law No. 15 of 2015 has recognized the authenticity of electronic documents as evidence. In that, it has stipulated that *"Without prejudice to the conditions stipulated in the law, the authentic proof establishing to the originator of electronic writing in official or customary electronic writing if the following technical controls are available: 1. To be technically available, specifying the time and date of creation of electronic writing or official and customary electronic paper. 2. That this availability is made through an electronic preservation system that is not under the control of the creator of this writing or those documents, or by the addressee of it..."*

The Palestinian legislator has in Article (9) of Decision No. 15 of 2017 regarding Palestinian electronic, that *"The electronic record is considered protected from the date of its verification if specific verification procedures are agreed upon between the parties to ensure that it has not been changed since a specific time."*

Moreover, Article (7) of the Jordanian Electronic Transactions Law has stated No. 15 of 2015 that *"The electronic record, electronic contract, electronic message, and electronic signature are considered to be products of the same legal effects arising from written documents and written signature under the provisions of the legislation in force in terms of their obligation to their parties or their authority to prove ..."*

From the above discussion, it is evident that the issuance and existence of the electronic administrative decision can be proven if the following conditions are met: The presence of a third party independent of the parties to the document and not subject to the control of any of them and its task is to determine the time and date of creation of the electronic document or save it through an electronic save system. The ability to determine the source of the electronic document and the degree of control of its creator so that the authority that is issued the electronic decision can be identified, and whether it has jurisdiction or not, by verifying the issue of electronic signature on this decision. The availability of modern technology to detect the amendment that may occur in the electronic document proves that the administration has issued its electronic decision in the form in which it was issued without any subsequent amendment. In this way, the judiciary can exercise its oversight over the availability of the reasons for the decision that the law may require in some instances. (HOSNIA)

The bottom line is that there is nothing to prevent the possibility of proving the issuance and existence of the electronic administrative decision by the administrative authority, as well as proving its date, and thus applying the same rules for enforcing the formal administrative decision to the rules for enforcing the electronic

administrative decision when that it is fulfilled its validity strips and gathering the pillars stipulated by law (Alnsour, 2016). In addition, the developed legislation in most countries has begun to accommodate the idea of proving the issuance of the administrative decision electronically, thus proving the legal existence of this decision, even if that is required some legal amendments so that it can be said that the countries have moved towards electronic administration to provide its services to individuals, and the smooth functioning of the public facility, and in line with the steady development in the world of electronic technologies (Abdul Aziz, 2011).

4. Means of Enforcing the Electronic Administrative Decision

When studying the means of enforcing the electronic administrative decision, it is necessary to talk about the methods of knowing the electronic administrative decision and studying some of the problems resulting from electronic publishing and declaration. This is what the researchers will address in the following:

4.1 Methods of Knowing of the Electronic Administrative Decision

As for the means of enforcing the administrative decision have evolved to become electronic, this necessarily requires that the means of knowing with it evolve, so that it is also electronic. There are several ways in which knowledge of the electronic administrative decision can be proven.


Electronic Publication

Publishing is considered a means of knowing about organizational decisions. Publication means announcing or informing all people, including the concerned person, of the content of the decision issued by the administration so that they are aware of it. The principle is that it is left to the administration to choose the methods of publication that it is considered appropriate to all. But if the law is stated a specific method of publication, the publication must be carried out according to this method. If the administration followed a method other than that stipulated by law, the publication is invalid, and the time for the appeal remained open (Gomaa, 2013).

In the face of the progress that countries are witnessing in the field of electronic means and the use of public administration for these methods in the conduct of public facilities, for their ease and speed. The idea of announcing and informing administrative decisions by publishing electronic methods such as the internet and others has been accepted (Al-Ajarmah, 2013).

Therefore, is it start with these methods the date for the appeal to cancel the administrative decisions, as the administration may send the administrative decision via the website or its e-mail if it is available to the concerned persons, then could these methods be considered legal to inform individuals or concerned persons with the administrative decisions (Shaheen, 2010).

Initially, the administrative jurists have not discussed the idea of the electronic administrative decision and its enforcement methods in confronting the administration and individuals. But few jurists have discussed the idea of electronic methods and their



effect on the enforcement of the administrative decision. Some jurists have opposed it by criticizing it, where they said that even if the methods of electronic knowing, such as fax, are faster and more accurate than the postal method of delivering knowledge to the concerned persons, it has not led to the knowledge itself, but rather is an assumption of knowing only, because the concerned persons may not receive a copy of the decision by fax and another person will receive it (2010).

However, the authors have found the tremendous development of countries in electronic means and access to electronic government. It is possible to rely on these electronic means to communicate the electronic administrative decision of the concerned persons, especially since Palestinian and Jordanian legislation have allowed this. The Supreme Court of Justice ruled when discussing the methods of knowing the administrative decision - using the expression "*Or any other method*" and within the concept of this phrase includes electronic methods. Through this ruling, which came out with the absolute phrase, the announcing or informing of the administrative decision can be considered by electronic publishing, such as the internet, is a valid announcing or informing (Supreme Court of Justice, Case No. 230/2004).

In sum, the Palestinian and Jordanian legislation have absorbed the idea of knowledge of the administrative decision through electronic publishing through modern electronic methods such as the internet, whenever it is proven that the administration has published the administrative decision on the website of the concerned persons, fulfilling all its elements and pillars.

ELECTRONIC DECLARATION

The electronic declaration is intended to inform individuals of the electronic administrative decision through the management by the various means it is deemed appropriate. The declaration is the primary means of informing individual administrative decisions, as it is addressed a specific individual or individuals specific, so it is easy for management to inform those concerned about it. If the declaration is how the administrative decision is passed on to the concerned parties, the time for appeal for cancellation begins when it is proven that it has been achieved (Chloe, 2012).

Setting controls for this type of electronic declaration is required to help keep pace with this development. If it is easy concerning organizational decisions, then these controls can be determined about individual administrative decisions. This is through the endorsement of individuals when they submit requests through the internet that they want to receive an electronic response to the site of their choice, such as e-mail or mobile phone (Shobir, 2015).

Therefore, when an electronic application is submitted to the administration to obtain a specific service or to create or amend a legal status, it can be agreed with the administration that the correspondence is done via the internet. To this end, a pledge or recognition of that agreement is signed and then informs the competent

administrative authority of the website that the person wants to receive the management response (Al-Salmi, 2009).

If any questions are arisen in this regard, about proving the individual's receiving of the electronic message that includes the management's response. Is it from the moment the administration sends it to the website or the agreed e-mail? Or from the moment the e-mail was opened by the concerned person. Sometimes it may be proven that the person has opened his website, but he has not opened the electronic message sent by the administration. Is this considered a legal declaration? Is it protesting in his confrontation that he could have opened that message to see the management's response, but he is failed to do so because he opened his website without seeking to open that message?

That the answer to these questions, you need to study the legal rules that prove the receipt of the electronic message, and on the assumption of the existence of the electronic signature, both for the administration and individuals, and that this signature has been certified according to what is required by the uses of technological means, and what is stipulated in the legislation, it can be summarized the rules for electronic declaration are as follows:

1. The time of sending the message included in an electronic decision: Most legislation regarding electronic transactions determines the time of sending the electronic message when the message is entered into an information system that is not under the control of the sender or receiver. Thus, it can be said that the time to prove the sending of the electronic decision by the administration is when that message is entered into an information system, which is outside the control of the administration and the concerned person. (Yassine)

2. The time of receiving the message that is contained an electronic decision: Some legislation regarding electronic transactions specify the time of receiving electronic messages by the addressee to be considered. This is different if the addressee is specified an information system to receive the electronic message or not. If the addressee specifies that system and then sent to that system, the message is received the moment the message has entered that system. Still, if no information system is specified, the moment of receiving is when the message is entered into any information system of the addressee (Al-Salmi, 2009).

THEORY OF CERTAIN KNOWLEDGE

The Palestinian and Jordanian administrative judiciary has added to the means of the publication and declaration stipulated by the law the mean of specific knowledge. Therefore, if the concerned person is known the content of the decision, this knowledge is valid and produces its effects in calculating the date for challenging the decision (Al-Zubaidi, 2007).



In the framework of the administration's adoption of the electronic administrative decision and modern technological means, this matter is led to limiting the theory of specific knowledge in its traditional form, as the person required to be notified of the administrative decision has known the electronic decision with certainty. The electronic administrative decision is based on the arrival of the electronic message that is included the administrative decision required to inform the concerned person, where this is done via e-mail, which has a secret number that only the owner is known (Al-Zubaidi, 2007).

In addition, the administrative judiciary has established that the theory of specific knowledge is a material fact. Therefore, it can be proven by all legal means of proof, and the Supreme Court of Justice has ruled that *"The means of knowing of the administrative decision are not limited to publishing and declaration, but instead include the theory of specific knowledge and the administrative judiciary can verify from it with all the means of proof"* (Supreme Court of Justice, Case No. 20 of 2001).

4.2 Some Problems Arising from Electronic Publishing and declaration

a) The electronic message that containing an administrative decision may be sent to the concerned person and received without being extractable, and the reason for this may be either to use computer programs to protect the computer from malware or because of the inability of that device to extract that message, in this case, it can be argued that the publishing and declaration of the electronic administrative decision were not achieved, because the concerned person was unable to see the content of the decision sent by that electronic message (Shabir, 2015).

b) Failure to understand the content of the electronic message that is included an administrative decision or a request from the concerned person to the administration, the message may be extractable. Still, it is not understood, due to purely technical reasons, such as the message is encrypted, or because of the lack of necessary programs to read it in the receiving computer, or because of the incompatibility between the programs in the correspondent's computer with the software of the private computer to the addressee, all of this results in the result that the recipient will not be able to see the content of this electronic message (Al-Anzi, 2008).

c) Therefore, if the desired goal from publishing and declaration the electronic administrative decision, which is knowing the content of the electronic message containing that administrative decision, is not achieved, then the deadline for judicial appeals against the person has not begun, and the administration cannot protest with the knowledge of this decision against the concerned person. On the other hand, if the administration is unable to read the electronic message containing a request addressed to the administration from a specific person, intending to cause a legal effect, then it is not aware of this request, which is resulted in the inability to

invoke the negative decision issue, on the pretext that the administration took an opposing stance, and that the legally defined extension has passed (Hegazy, 2003).

d) The electronic message containing the administrative decision by the administration has not reached the concerned person, or a request directed by the person to the administration: for example, if the information system of the receiving party is refused to receive it because there is not enough space to store it, and thus the message has not reached, this has not fulfilled the notification to the concerned person with the content of the electronic administrative decision, and the period of appeal against it has not begun. Therefore, the authors have considered the moment of opening the website of the addressed person by the electronic administrative decision as the moment informing him/her of that decision, unless it is proven that he was unable to view it for reasons beyond his control, such as if the message was not understood, or because there was a technical defect in his computer, and because of that, he was not able to see that message.

CONCLUSION

This article is included the most important results and recommendations as follows: The Palestinian and Jordanian legislators have not defined a definition of the electronic administrative decision, as it is the result of the tremendous development in technological progress at present. In addition to the fact that there is nothing in the Palestinian and Jordanian legislation that is prevented the administration from expressing its will by using modern technological means. Also, the legislator has not required the issuance of the decision to be written or verbal. The legal provisions accommodate the issuance of the decision electronically, as long as the pillars of the administrative decision are considered. The law and judiciary have not stated a specific form for issuing an administrative decision in it. Consequently, the administration's will can be disclosed in any way, including the use of the electronic system.

The terms and conditions could prove the existence of the electronic administrative decision as it is defined by the Palestinian decision No. 15 of 2017 regarding electronic transactions and Jordanian law in the Electronic Transactions Law No. 15 of 2015. As a result of the tremendous development accompanying electronic methods and reaching electronic management, it is possible to consider electronic means to prove knowledge of the electronic administrative decision. Mainly since the Supreme Court of Justice spoke about the methods of knowing about the administrative decision, as it used the expression "*...or any other method....*" and within the concept of this phrase is included electronic methods. Some of the jurists said that the term electronic management is the term closest to achieving compatibility between the concept of e-government and the services provided by the state, on the basis that what is meant is not the exercise of the power of government in an electronic manner, but the management of facilities electronically, and the provision of services in this way.



Therefore, tremendous development that countries are accompanying in the field of electronic methods, to reach electronic management, and the electronic administrative decision necessarily entails making some amendments to some provisions of laws such as the Law of Electronic Transactions in Palestine and Jordan. To keep pace with this development, especially laws related to proof, because the problem may arise about proving the existence of the electronic administrative decision and knowing about it. This paper concluded that activating and making some amendments to some laws to keep pace with this development will save efforts, money, and time. In addition, the electronic enforcement of the administrative decision can be adequately enforced in Palestine and Jordan through electronic publishing, electronic declaration, or theory of specific knowledge.

The authors recommend the Palestinian and Jordanian legislators to put in place a unique system according to which all issues related to the electronic government are organized, including all issues related to electronic administrative decisions from the moment of their issuance until their implementation through their enforcement, withdrawal, and cancellation if electronic methods do this.

The authors recommend activating the role of the Supreme Court of Justice. Besides, make some amendments to the Palestinian decision No. 15 of 2017 regarding electronic transactions and Jordanian law in the Electronic Transactions Law No. 15 of 2015 to keep pace with this development.

In addition, in light of the foregoing, the authors suggest that the legislator in both countries of Palestine and Jordan will follow a set of integrated legislative steps in regulating the incident of electronic enforcement to the administrative decision within the framework of its overall regulation of electronic administrative transactions, including the development of the electronic official gazette law to publish regulatory decisions and other actions, and the stipulation in the body of this law is on the website address of the official gazette, obligating all departments to publish through it, and directing individuals to follow it up to ensure that their knowledge is achieved in the best possible way. Moreover, the authors call on all public administrations in Palestine and Jordan to deviate from the traditional management theory and get rid of its routine procedures, to benefit from the official government approach in this regard and to meet the legislative will, and to start equipping their headquarters with all the technical, human and electronic methods necessary to launch towards achieving knowledge of their decisions through these methods.

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