



# THE ADMINISTRATIVE DECISION AS A MODERN STYLE OF ELECTRONIC ADMINISTRATION

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## Abstract:

*This research paper focuses on the electronic administrative decision as a modern approach to public administration, in the context of the Algerian state's strenuous efforts to modernise public administration to keep pace with developments in the virtual world and to embody e-government with the aim of protecting the public interest and bringing the administration closer to the citizen, and to allow citizens to access digital platforms to learn about the decisions addressed to them, which contain the basic elements present in the traditional administrative decision, but are carried out through electronic technology. This has led us to investigate the issue of the evidentiary value of the electronic administrative decision as a modern approach to public administration, and its evidentiary value through electronic writing and text messages via email.*

**Keywords:** *Electronic administrative decision, electronic publication, electronic notification, electronic writing, e-mail.*

## INTRODUCTION:

The tremendous development that the world has witnessed in the twenty-first century has imposed a new type of government administration due to the technological and information revolution. Government agencies and local communities have moved from traditional routine public administration based on paper-based support and conventional means to electronic public administration based on electronic support to save time, effort and cost, which has become known as "zero paper". They use modern means of administration and respond to the needs of citizens by bringing the administration closer to the citizen through the use of electronic networks.

The Algerian state, like other Western and Arab countries, has begun to adopt the electronic administration system, where electronic services have been introduced in government agencies and local communities. For example, the Ministry of Justice has a remote trial system, and the Ministry of the Interior and local authorities have electronic contracts and electronic civil status services. Algerian e-government staff can also issue electronic administrative decisions by the competent authorities, which can be appealed to the competent authority and relied upon before the administrative judge.

It is from here that the question can be raised: To what extent can the electronic administrative decision be considered a modern administrative method?

To answer this problem, we have divided our study into two parts:

**The first part: The conceptual aspect of electronic administrative decisions,**

**The second part: The enforcement of the electronic administrative decision and the validity of electronic means to prove it.**

**The first part: The Conceptual Aspect of Electronic Administrative Decisions**

One of the characteristics of administrative law is that it is an uncoded and rapidly evolving law, which allows it to adapt easily to the modern requirements of modern administration. Administrative decisions are considered to be one of the most important management tools that must be issued by public persons, bodies and institutions, and they have a number of formal and substantive characteristics in order to be valid for appeal before the Administrative Court or the Council of State. However, the Algerian State is keen to keep pace with developments in the virtual world, which has



led it to use modern electronic technology to issue administrative decisions, known as electronic administrative decisions. The public administration uses them as a legal means of expressing its will. In this part, we will first deal with the concept of electronic administrative decisions and then we will discuss the elements of electronic administrative decisions(second).

**First: The concept of electronic administrative decisions:**

Electronic administrative decisions have characteristics that distinguish them from traditional administrative decisions. They have formal and substantive elements that need to be clarified after the definition of the electronic administrative decision.

**1- Definition of the electronic administrative decision:**

Before dealing with the definition of the electronic administrative decision, it is necessary to address the problem of the use of electronic devices by public administration employees in making traditional administrative decisions, which has raised the question of who has the authority to revoke this administrative decision<sup>1</sup>.

Legislation has not defined the electronic administrative decision, which has opened the door wide for doctrine to determine the legal meaning of the electronic administrative decision. It has been defined as “the use of information systems by the competent authorities to select one of the alternatives proposed”.

It has also been defined as “the public administration’s receipt of the electronic request on its website, its disclosure of its binding will to issue decisions and sign them electronically, and its announcement to the interested party on their electronic mail, by virtue of its authority under the laws and regulations, for the purpose of producing a certain legal effect that is legally occupied or possible, seeking the public interest”<sup>2</sup>.

From the previous definitions of the administrative decision, we can define it as: the individual legal act issued by the public administration by electronic means, which has legal effects created by electronic means.

**2- Characteristics of electronic administrative decisions:**

On the basis of the above, it can be said that traditional administrative decisions and electronic administrative decisions share characteristics that distinguish them from similar instruments.

The administrative decision is a legal act: Not every act or legal instrument issued by the public administration is considered an administrative decision. For an administrative decision to be considered a legal act, two conditions must be met: it must be of an executive nature and it must produce an effect or damage in itself:

By creating a new legal effect: For example, at the local level, the mayor of a municipality adopts a decision to appoint a person to a public position in the municipality, and the appointed person then acquires rights, such as a salary, and assumes obligations, such as performing the work.

Or by changing an existing legal status: For example, a decision by the Minister of Public Works to promote an employee, whether in terms of grade or salary increase.

Or by cancelling an existing legal status: For example, the electronic administrative decision, which is not enforceable against individuals until legal proceedings have been completed<sup>3</sup>.

The administrative decision is issued by a unilateral will: The administrative decision is characterised by the fact that it is a unilateral act, resulting solely from the will of the public administration in the exercise of its powers<sup>4</sup>.

The administrative decision can take many forms and types, depending on the authority that issued it: the order, the presidential decree, the executive decree, the joint ministerial decision, the ministerial decision, the provincial decision, the municipal decision, the decision of the director of the public institution, etc.

The judicial power to consider appeals for the annulment of an administrative decision is vested in the administrative judiciary, depending on the form of the decision, and thus in the public administration or body that issued it<sup>5</sup>.

The electronic administrative decision is issued by the unilateral will of the electronic public administration, which prepares, signs and issues it electronically, without the involvement of any



other will. This distinguishes the decision from electronic administrative contracts, where the will of the administration and the contracting party are involved<sup>6</sup>.

In addition, the decision must be issued by a national administration, not a foreign one, i.e. it must be issued by a public service.

**Secondly, the elements of the electronic administrative decision:**

The elements of the electronic administrative decision are the formal elements, represented by the competence and the form of the electronic administrative decision, in addition to the substantive elements: the subject matter, the reason and the purpose. Therefore, in order for the administrative decision to be considered in accordance with the law, it must fulfil both its formal and substantive elements<sup>7</sup>.

**1- The formal elements** :include, in the first place, the element of competence and, in the second place, the form and the procedure.

a- The element of competence: The modern public administration is based on the principle of division and distribution of competences among its various bodies and personnel, in order to improve administrative performance and define responsibilities. The law assigns the taking of certain administrative decisions to a specific person or employee in the public administration. Competence in administrative decision-making is defined as “the ability, capacity or authority granted to a person or administrative body to legally perform a certain act”<sup>8</sup>.

Since the competent authority cannot waive the rules of jurisdiction on the pretext of the urgency that exceptional circumstances may impose<sup>9</sup>.

Since jurisdiction is a pillar of the administrative decision that relates to public order, it

- It cannot be agreed to violate its rules.
- The judge can raise it on his own initiative at any stage of the administrative procedure.
- Cannot be subsequently corrected<sup>10</sup>.

Applying the above to the electronic administrative decision, the administration’s obligation to respect the rules of jurisdiction is present and continuous in the light of its implementation of the new reality and its applications of the e-government system<sup>11</sup>.

**B- The element of form and procedure:** The general rule is that the administrative decision does not require a specific form or the observance of certain procedures or be cast in special forms, but in order to protect rights and freedoms and the proper functioning of the public administration, certain forms and procedures are required. What is meant by the element of form in the administrative decision and what are the procedures followed in this respect?

The pillar of forms and procedures in the administrative decision is defined as follows “the disclosure by the administration of its will in the form prescribed by law, so that it takes a series of measures to express it in a definite or implicit manner”.

Accordingly, the administration must respect the formal and procedural rules in the electronic administrative decision, just as in the case of traditional administrative decisions, on the basis that the electronic administrative decision does not acquire legal force unless all the general rules and provisions governing the traditional administrative decision are available so that they are taken into account<sup>12</sup>.

Procedures refer to the steps that the issuer of the decision must follow during the preparation and drafting stages, and the administrative decision differs from one decision to another<sup>13</sup>.

Failure to comply with the required form and procedures renders the administrative decision defective and subject to challenge before the competent authorities.

**2- Objective elements of the electronic administrative decision:**

The objective elements of the electronic administrative decision are represented in the subject matter, the reason and the purpose, which we will deal with as follows:

**a- The subject matter element:** The subject matter of the administrative decision refers to the legal effect that results immediately and directly from its issuance<sup>14</sup>.

According to the general rules, in order to determine the subject matter, it is necessary that it is possible and not impossible, and that it is lawful, i.e. not contrary to public order and morality, in order to be taken into account.



On the basis of the above, the same applies to the subject matter of the electronic administrative decision as to the subject matter of the traditional administrative decision, with the exception that the subject matter of the former is always specific, i.e. the electronic intermediary does not have discretionary power in the field of the choice of the subject matter of the decision, since he is programmed to carry out a specific task, and the technological development has not yet reached a stage that will allow the intermediary to think and choose a suitable subject matter for his decision, although this may happen in the future<sup>15</sup>.

**b- The element of reason:** The reason element in the administrative decision is the set of legal and material situations that precede the decision and the motive for the administrative authority to make it. Accordingly, the administrative authority cannot take the decision unless there is a legal or factual reason or set of reasons that drives the administration to create a legal effect through the issuance of an administrative decision, whether the reasons for the administrative decision are legal, which take the form of a constitutional or legislative text, or material or factual reasons, such as a resignation request, or cases of safety or environmental disturbance<sup>16</sup>.

The element of reason in the electronic administrative decision is achieved through the preparation of a special field or statement in the electronic form of the decision to include its reason<sup>17</sup>.

**c- The element of purpose:** The purpose or goal in the administrative decision refers to the final result that the public administration seeks to achieve through its issuance. The element of purpose is of a subjective nature, unlike the element of cause, which is of an objective nature. The purpose expresses the intention, purpose and will of the source of the decision<sup>18</sup>.

With regard to the element of purpose in the electronic administrative decision, we note that the purpose of programming an electronic system for the automation of work is undoubtedly to achieve the public interest, but this does not reveal to us the purpose of the automated electronic program<sup>19</sup>.

#### **The second axis: The procedural aspect of the electronic administrative decision**

In this axis, we will deal with the means of implementing the electronic administrative decision (first) and then we will discuss the authenticity of the electronic means of proving it (second).

##### **First: The enforceability of the electronic administrative decision**

In other words, it comes into force on the day it is issued, provided that the legal conditions are met<sup>20</sup>. However, the administrative decision cannot be enforced against individuals until they have been informed of it by the prescribed means, which is either publication or announcement or electronic notification. The doctrine has added a third means that shows the certainty of knowledge of the administrative decision even if it has not been published or announced, and this means is "definite knowledge".

In the light of the developments in the actual enforcement of the administrative decision, it is directed towards the establishment of electronic procedures in order to complete its three means, which means the birth of the electronic publication of these decisions, in addition to the electronic announcement thereof, as well as the possibility of establishing definite knowledge based on the existence of presumptions and evidence proving its existence, derived from these procedures<sup>21</sup>.

**1-Electronic publication:** Electronic publication is the means by which the interested parties are made aware of the administrative decisions.

The Supreme Administrative Court in Egypt defined publication as: "The administration following the prescribed formalities so that the public knows about the decision". This is the same as what is recognised by some of the doctrine where it is defined as: "Informing the people, including the stakeholders, of the content of the decision issued by the administration so that they are aware of it". We can define electronic publicity as: "A procedural process of a programming nature aimed at transmitting knowledge of the administrative decision to everyone through the means provided by the electronic reality"<sup>22</sup>.

Publication differs from promulgation in several respects. The promulgation is carried out by the Head of State in order to enact a law that has been completed in accordance with the conditions laid down in the Constitution, while the publication is the administration's compliance with certain formalities in order to bring the decision to the attention of those to whom it is addressed. Publication is a physical process.



Issuance is related to laws, while publication is related to both laws and decisions. The law goes through two stages: the issuance stage and the publication stage, while the administrative decision is subject only to the publication procedure<sup>23</sup>.

**2-Electronic notification:** refers to the notification of this decision to the addressees by the public administration or administrative bodies by the means they consider appropriate. Publication is the primary means of knowing the individual administrative decision, as it is addressed to the persons concerned or to a specific person, thus facilitating the administration's communication to the interested parties. However, it presupposes the willingness of the individuals concerned to receive the answer electronically on the site of their choice<sup>24</sup>.

**3-The theory of certain knowledge:** it is not based on legal texts and is not limited to the actual knowledge resulting from the means of publication and announcement, but applies to all means of knowledge. Consequently, if the interested party has certain knowledge of the content of the decision, which negates any implied or presumed ignorance, this knowledge replaces the publication and announcement. In the case of the electronic administrative decision, the communication is carried out by modern means of communication, which leads to the limitation of the theory of certain knowledge in its traditional form, and there is no room for interpretation as to whether the person to be informed of the administrative decision knew it with certainty, not implicitly or presumably<sup>25</sup>.

**Second: The evidential value of electronic means in proving the electronic administrative decision**

The electronic administrative decision is issued from an electronic medium by means of electronic writing, electronically signed and marked by a competent employee, in addition to the e-mail that plays a crucial role in the delivery of this medium and in informing the persons addressed by these electronic administrative decisions. However, the question that arises here is: what is the value or evidential value of electronic writing and electronic mail to be taken into account before the competent authorities? And what is the legal basis for this?

On this basis, we will first consider the authenticity of electronic writings and their evidential value, and then the evidential value of emails.

**1- The authenticity of electronic writing in the proof of the electronic administrative decision:**

The Algerian legislator recognised electronic writing in the 2005 amendment to the Civil Code by Law No. 05-10 in the text of Article 323 bis, which states that: "Evidence in writing in electronic form shall be considered equivalent to evidence in writing on paper, provided that the identity of the person who issued it can be verified and that it was prepared and stored under conditions that guarantee its integrity"<sup>26</sup>.

Accordingly, an electronic document can be defined as "Anything recorded in an understandable language on electronic media and displayed through multiple communication screens"<sup>27</sup>.

In the light of what the contemporary legislator has established, part of the doctrine has gone to say that electronic writing is represented by what takes place through modern communication networks, and therefore it is considered a means of proving legal transactions before the competent authorities to consider the appeal against the electronic administrative decision through the electronic medium without using the paper medium, and it will have the same probative value<sup>28</sup>.

**2- The evidentiary value of e-mail in proving electronic administrative decisions:**

The administrative judge has broad powers to determine the evidentiary value of e-mail in the field of evidence and its effective role in verifying any evidence presented to him in the context of a dispute, examining it and deciding whether or not to consider it, according to his conviction. On this basis, some case law has established the evidential value of e-mail in civil and commercial matters. Moreover, the person(s) to whom the decision is addressed have a significant role in the consideration of the e-mail in relation to the question of their knowledge of the administrative decision, in cases where the administration proves their consent to the e-mail by receiving the electronic administrative decision at their e-mail address, for which purpose they have provided their e-mail address to the public administration<sup>29</sup>.





### CONCLUSION:

In conclusion, the Algerian state, like many other countries, has sought to provide the material and human resources to make this development in the virtual world a success, in order to modernise the public administration and prepare specialised and qualified human resources to use electronic technologies and use them to meet the needs of citizens and bring the administration closer to the citizen, and use them to take electronic administrative decisions. The Algerian legislator has adopted this approach, but has not defined the electronic administrative decision and has not specified the electronic form, due to the changes in the electronic technologies to be issued, which has opened the door wide to legal interpretations. The electronic administrative decision may be evidenced by an electronic letter or e-mail and in the cases specified by the legislator in electronic transactions.

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