

Judicial Termination of Electronic Administrative Contracts: Balancing Between Public Interest and Digital Contractor Guarantees

الفسخ القضائي للعقد الإداري الإلكتروني: موازنة بين مقتضيات المصلحة العامة وضمانات المتعاقد الرقمي

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Abstract:

This study investigates the judicial and administrative rescission of electronic administrative contracts within the context of digital transformation. It critically analyzes the administration's prerogative of unilateral termination, exploring its legal constraints in an increasingly automated and digitized environment. The research further examines the administrative judge's oversight of electronic rescission, distinguishing between penal rescission as a sanction and discretionary rescission for public interest. It assesses the judiciary's authority to annul such decisions or award damages. The study concludes that maintaining a rigorous equilibrium between the administration's discretionary powers and the legal safeguard of the digital contractor is fundamental to ensuring contractual justice in remote public procurement.

Keywords: Electronic Administrative Contract; Administrative Termination; Digital Transformation

ملخص:

تتناول هذه الدراسة أحكام الفسخ القضائي والإداري للعقود الإدارية الإلكترونية في سياق التحول الرقمي حيث تعتمد إلى تحليل دقيق لسلطة الإدارة في الفسخ الانفرادي، واستكشاف قيودها القانونية في بيئة تزداد اعتماداً على الأتمتة والرقمنة، كما يتناول البحث رقابة القاضي الإداري على قرارات الفسخ الإلكتروني، مع التمييز بين الفسخ الجزائي كعقوبة تعاقبية والفسخ الجوازي لمقتضيات المصلحة العامة، وصولاً لتقييم سلطة القضاء في إلغاء هذه القرارات أو التعويض عنها، وخلصت الدراسة إلى أن الحفاظ على توازن دقيق بين السلطة التقديرية للإدارة والضمانات القانونية للمتعاقد الرقمي يعد ركيزة أساسية لضمان العدالة العقدية في مجال المشتريات العمومية المبرمة عن بُعد.

الكلمات المفتاحية: العقد الإداري الإلكتروني؛ الفسخ الإداري؛ التحول الرقمي.

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Introduction:

Like other instruments within the sphere of public law, the administrative contract is fundamentally a legal agreement forged by the mutual consent of two distinct wills—manifested through offer and acceptance—thereby establishing reciprocal obligations between the public administration and its private contractor. Nevertheless, this contractual intent may, on occasion, pivot toward dissolving the relationship before its complete fulfillment through the mechanism known in administrative jurisprudence as "termination" (Al-Faskh). Within the contemporary context of the electronic administrative contract (EAC), which is fully concluded and executed via digital platforms, the core legal essence of termination remains intact, but it is imbued with critical new technical and regulatory dimensions. These emerging complexities primarily concern the technical validity of digital notification mechanisms, the evidentiary weight of electronically exchanged consent, and the methodology for proving contractual breach using authenticated electronic records and digital timestamps.

The termination of the administrative contract by the unilateral will of the administration represents one of the most significant and exceptional prerogatives held by the public authority over its contracting partner. This power is inherently disruptive because it severs the contractual bond in a one-sided manner, often resulting in substantial financial detriment for the private entity. Consequently, the exercise of this sovereign power is not unfettered; it necessitates rigorous judicial review by the administrative judiciary. The courts are critically tasked with verifying the legality and proportionality of the termination and ensuring that this exceptional public power is not arbitrarily abused. This judicial oversight functions as the primary safeguard protecting the contractors rights against administrative overreach.

Constraints on the Contractors Right to Terminate

Conversely, the contractor's authority to terminate the administrative contract—irrespective of whether it is in its traditional or electronic form—remains highly circumscribed and limited. The contractor is generally prohibited from unilaterally effecting termination based on the administrations breach. This restriction is paramount because the contract serves the public service, which must be maintained regularly and continuously. Thus, the contractor's avenue for redress is confined to seeking judicial termination. This requires the formal intervention of the administrative judge to thoroughly adjudicate the validity of the termination's justifications and, crucially, to safeguard the essential contractual equilibrium—reinforcing the enduring principle that the public interest takes precedence over the contractors private right to self-help remedies.

The significance of this study stems from its engagement with a nascent and inherently evolving subject: the digital transformation of administrative contracts and the consequent novel legal challenges in the realm of termination. This includes the administrations exercise of its unilateral power to end the electronic contract and the administrative judges oversight of this termination's legality within a rapidly evolving digital environment. The shift from paper-based to electronic contracting has introduced complex issues for administrative contracts concerning evidence, jurisdiction, cybersecurity, and the protection of the contractor's legal standings. This demands a re-examination of traditional legal concepts in light of the public services digital transformation and the imperative to reconcile technical flexibility with legal safeguards.

This study also aims to: analyze the legal nature of the electronic administrative contract and illustrate its similarities to and differences from the traditional administrative contract; determine the legal basis for the administrations authority in electronic termination and define its limits to serve the public interest without infringing upon the contractors rights; and highlight the role of the administrative judge in reviewing the legality of electronic termination and the extent of their power to restore the contractual balance. Furthermore, it proposes a modern legal framework for regulating

termination in digital administrative contracts, one that considers technological advancements and the demands of contractual justice.

In light of the foregoing, the central research problem of this study crystallizes around the following question: To what extent can the administrative judiciary reconcile the administrations prerogative of unilateral rescission with the legal protections afforded to digital contractors?

This study is primarily concerned with the judicial termination of electronic administrative contracts, employing a descriptive and analytical methodology. It rigorously examines the scope and effectiveness of administrative judicial oversight over the administrations exercise of its unilateral termination powers, thereby establishing judicial intervention as the central focus of the analysis.

Section I: The Role of the Administrative Judge in Monitoring the Administrations Authority to Unilaterally Terminate Electronic Administrative Contracts

Disputes arising from the termination of administrative contracts fall within the jurisdiction of the Cour de pleine juridiction (court of full jurisdiction). This allocation of jurisdiction is grounded in the legal characterization of the termination decision itself. The act of termination does not constitute an autonomous administrative act susceptible to annulment proceedings (*recours pour excès de pouvoir*); rather, it is considered an act performed by the administrative authority in its contractual capacity, not as an organ exercising prerogatives of public power.

This distinction lies at the very core of administrative law theory, as it delineates the boundary between the administrations conduct as a public authority and its actions as a co-contractor in administrative agreements. The principle is deeply rooted in established administrative jurisprudence, reflecting a consistent line of reasoning that the administration, when acting within the scope of an administrative contract, must submit to the jurisdiction of the courts of full jurisdiction when disputes concern contractual performance, breach, or termination.

From a jurisprudential standpoint, the French Council of State (*Conseil d'État*) has long affirmed this doctrinal foundation, recognizing that the termination of an administrative contract falls outside the ambit of unilateral administrative decisions subject to annulment and instead constitutes a matter of contractual liability and equilibrium. Consequently, any challenge to such a termination necessarily engages the courts power to assess not only the legality but also the merits, consequences, and potential reparations arising from the administrative act in question.

This principle has been consistently adopted and reinforced within the Algerian administrative judiciary, particularly in the context of public procurement disputes. The Algerian Council of State (*Conseil d'état algérien*), in its Decision No. 063683 rendered on 12 January 2012, in the case of *Commune of El Eulma v. H.A.*, unequivocally affirmed that disputes relating to the termination of public contracts fall within the purview of the courts of full jurisdiction. The Council emphasized that, since the termination stems from the contractual relationship between the parties, the competent judicial forum is not one of annulment but one capable of adjudicating the full range of contractual rights and obligations, including the assessment of damages and the restoration of contractual balance.

Thus, the jurisdictional demarcation between annulment proceedings and full jurisdiction proceedings serves not merely as a procedural technicality but as a substantive guarantee of effective judicial protection for both contracting parties. It ensures that the administrations prerogatives do not overshadow the principles of contractual fairness and reciprocity that underpin administrative contracts. This doctrinal and jurisprudential continuity reflects the broader objective of administrative justice—to reconcile the public interest with the legitimate expectations and rights of private parties engaged in contractual relations with the State ⁽¹⁾.

Consequently, in accordance with well-established principles of administrative doctrine, the public administration is recognized as possessing an inherent and discretionary authority to unilaterally terminate its administrative contracts, even in the absence of an express contractual provision or stipulation to that effect. This prerogative is derived from the administrations unique status as a public entity entrusted with safeguarding the general interest, which inherently distinguishes administrative contracts from those governed purely by private law.

The unilateral termination power is not contingent upon the explicit consent of the co-contracting party nor upon the inclusion of a specific clause within the contract or its annexes. Rather, it emanates from the administrations prerogatives of *puissance publique* (public authority), enabling it to act unilaterally when required by considerations of public necessity, service continuity, or the protection of public order.

This power extends comprehensively to all categories of administrative contracts, including but not limited to public works contracts, supply agreements, and public service concessions. In certain circumstances, even employment or service-related administrative contracts—where the public interest demands flexibility in management—may be subject to such unilateral termination, provided that due process and the principles of proportionality and good faith are duly observed.

Nevertheless, this prerogative is not absolute. Jurisprudence has consistently affirmed that unilateral termination must be exercised within the framework of legality and fairness. The contracting party adversely affected by such termination retains the right to seek compensation before the courts of full jurisdiction, particularly for losses incurred as a direct consequence of the administrations decision. Thus, while the administration may terminate in the name of public interest, it remains bound by the overarching principles of equality, legality, and contractual balance that form the cornerstone of administrative justice ⁽²⁾.

Administrative termination is a decisive measure that conclusively ends the contractual relationship without the need for judicial recourse. However, this exceptional power is subject to review by the administrative judge to prevent its misuse or abuse.

A) : Judicial Review of Termination for Default in Electronic Administrative Contracts

Termination for default is a disciplinary tool employed by the public administration when the contractor breaches its fundamental obligations. It is the most severe sanction available to the administration, invoked only after exhausting all other corrective measures ⁽³⁾.

With the progressive digitalization of public administration, the scope of administrative contracting has expanded to include electronic administrative contracts, wherein procedures of formation, performance, and termination are increasingly conducted through secure digital platforms. Within this context, termination procedures now encompass digital formal notices (*mises en demeure électroniques*) and authenticated notifications of contractual breach transmitted via officially designated e-procurement and e-contracting systems. This technological evolution has consequently elevated the significance of judicial oversight, particularly in assessing the legality and procedural regularity of electronic termination decisions.

Reviewing the Legality of the Termination for Default Decision: In exercising its full jurisdiction, the administrative judge is tasked with verifying the legality of the termination decision rendered through electronic means. This involves ensuring that the decision was issued by the competent administrative authority, through the official digital platform authorized for electronic contracting, and that all essential procedural and substantive requirements prescribed by law were duly observed.

Foremost among these procedural safeguards is the issuance of an electronic *mise en demeure* (formal notice) to the contractor prior to termination. This step constitutes a substantive legal condition for the validity of the termination decision, as it confirms that the contractor was duly informed of the alleged breach and afforded an opportunity to remedy the default within a reasonable period. The requirement of prior notification thereby fulfills the dual elements of knowledge and warning, both of which are indispensable to the principles of due process and good administration.

The digital transmission of such notice must occur through legally recognized and verifiable means—such as registered administrative email, authenticated digital correspondence, or the official electronic platform dedicated to public procurement communications. These tools ensure traceability, integrity, and non-repudiation of the communication process, thereby safeguarding both parties procedural rights.

Failure to comply with these formalities—specifically, the omission of the electronic formal notice or its transmission through irregular means—renders the termination decision unlawful, tainted in both form and substance. In such cases, the administrative judge may declare the decision null and void for procedural defect or abuse of power, reaffirming the overarching principle that technological modernization does not exempt the administration from adherence to the fundamental requirements of legality, transparency, and respect for the rights of contractors.⁽⁴⁾

The Algerian legislator has codified this foundational principle within the framework of public procurement regulation, expressly enshrined in Article 112 of Presidential Decree No. 15-247 governing public procurement and public service delegations. The article provides that: If the contractor fails to fulfill its obligations, the contracting authority shall serve it with a formal notice to comply within a specified period. Should the contractor fail to remedy its default within that period, the contract may be terminated unilaterally.

This legislative provision not only consolidates the administrations prerogative to unilaterally terminate contracts for default but also establishes the formal notice (*mise en demeure*) as a mandatory procedural safeguard. The requirement embodies a dual objective: to ensure that the contractor is formally apprised of its default and to guarantee the transparency and legality of administrative action prior to termination.

Within the broader context of Algerias ongoing digital transformation in public administration, the scope of this procedural obligation has been extended to encompass electronic modes of notification. In practice, the formal notice may now be served through officially designated electronic public procurement platforms, such as the Portail des Marchés Publics, where electronic service is validated by a certified, timestamped electronic log. This log functions as conclusive digital evidence attesting to the dispatch, receipt, and authenticity of the notification, thereby aligning administrative practice with the principles of digital traceability and procedural reliability.

Further specificity regarding the formal notices content and publication modalities was introduced by the Ministerial Decision of March 28, 2011, which delineated the compulsory elements of the notice, including the identification of the contracting authority, the nature of the default, the corrective measures required, and the timeframe for compliance. Importantly, this regulation mandated the electronic publication of such notices via the Official Gazette of Public Procurement and other nationally approved online portals, in addition to traditional paper publication in at least two daily newspapers, one in Arabic and another in a foreign language.

This dual publication system—digital and print—reflects a transitional hybrid model within Algerian administrative law, where emerging electronic governance mechanisms coexist with traditional procedural safeguards. The legislator's intent is clear: to ensure both the accessibility and

legal security of administrative communications, while progressively advancing toward a fully digitalized contracting environment. ⁽⁵⁾, emphasizing the necessity of repeating the notice twice before enacting unilateral termination.

The French Council of State was among the earliest judicial bodies to articulate and consolidate this foundational principle. Its landmark ruling in the *Société pour la Reconstruction Agricole* case, rendered on February 29, 1927, stands as a seminal precedent in administrative jurisprudence. In that decision, the Council of State affirmed that, notwithstanding the administrations prerogative to unilaterally terminate administrative contracts, such power remains subject to strict procedural and substantive guarantees. The ruling underscored that termination, by its very nature, profoundly alters the contractual equilibrium and the legitimate expectations of the contracting party; therefore, it must be exercised only in compliance with established legal safeguards and due process.

This jurisprudential foundation has continued to influence modern administrative law, extending its relevance to the emerging field of electronic administrative contracts. In the digital era, the requirement of procedural fairness has evolved to encompass not only traditional written notices but also digitally authenticated communications, which ensure both the traceability and verifiability of administrative actions. Consequently, the electronic termination decision must satisfy a dual standard: it must rest upon factually accurate, digitally verified evidence, and it must demonstrate proportionality between the severity of the contractual breach and the administrative sanction imposed.

Any digital termination measure lacking adequate legal or factual substantiation may render the administration electronically liable (*responsabilité contractuelle numérique*) for the unlawful exercise of its prerogatives. This liability reflects the evolving doctrine that, while technology enhances efficiency and transparency, it also amplifies the administrations obligation to maintain accuracy, fairness, and procedural integrity within digital environments.

Within this framework, the concept of “gross fault” (*faute grave*) acquires renewed significance. In the context of electronic administrative contracting, gross fault refers to a fundamental digital breach that undermines the essential structure of the contract or materially disrupts its execution through the digital platform. Examples may include the intentional manipulation of data, refusal to comply with electronic submission requirements, or actions that render the continued performance of the contract impossible within the platforms operational framework. Only such a grave and demonstrable breach constitutes sufficient justification for the administration to exercise its unilateral power of digital termination (*résiliation administrative électronique*) in conformity with the principles of legality, proportionality, and contractual balance.

Thus, through both historical jurisprudence and contemporary adaptation to digital governance, administrative law maintains its essential equilibrium: preserving the administrations prerogatives in the public interest while ensuring the protection of individual rights and procedural guarantees, even within the virtual domain of electronic contracting

Powers of the Judge in Response to Electronic Administrative Termination:

The electronic termination decision—even when executed through digital platforms or e-procurement systems—falls within the jurisdiction of the administrative courts of full jurisdiction (*juridiction de pleine juridiction*). This classification reflects the contractual nature of the dispute, which empowers the judge not merely to assess the legality of the administrative decision but also to examine its substantive grounds, its proportionality, and the corresponding financial consequences.

However, as a general rule rooted in both French and Algerian administrative jurisprudence, the administrative judge does not possess the authority to annul the electronic termination decision *per se*, since it is not regarded as a unilateral administrative act subject to annulment proceedings (*recours pour excès de pouvoir*). Instead, the judges powers are typically confined to verifying the legality and regularity of the digital termination process and, where appropriate, to awarding compensation for any damages resulting from an abuse of the administrations unilateral prerogative exercised through electronic means.

In practical terms, the court assesses whether the alleged electronic fault attributed to the contractor is factually established, legally substantiated, and proportionate to the digital sanction imposed—that is, the unilateral electronic termination of the contract. If the judge finds that the digital breach committed by the contractor justifies the termination, the claim for compensation will be rejected, as the termination is deemed a lawful exercise of administrative power within the digital framework.

This judicial approach was explicitly reaffirmed by the Algerian Council of State in its Decision No. 077626, rendered on November 21, 2013, which held that the forfeiture of the electronic performance guarantee constitutes an implicit form of compensation for the loss or damage sustained by the administration as a result of the contractors default. The ruling illustrates a key doctrinal balance: while the administration retains the right to unilaterally terminate in the public interest, the contractors financial liability and the forfeiture of digital guarantees are deemed to restore equilibrium between the parties within the electronic contractual framework.

Thus, the role of the administrative judge in this context transcends mere procedural oversight; it embodies a functional equilibrium between two competing imperatives—the administrations prerogative of unilateral digital action and the contractors right to legal protection and proportional redress. Through this balanced judicial approach, administrative justice adapts its traditional doctrines to the emerging realities of e-governance and digital contracting, ensuring that technological modernization does not erode the fundamental principles of legality, proportionality, and contractual fairness ⁽⁶⁾.

Conversely, Egyptian administrative jurisprudence has moved towards expanding judicial power in electronic administrative contracts, allowing for the annulment of a digital termination decision if its grounds are found to be flawed or if essential electronic procedures were violated ⁽⁷⁾. This reflects a legislative and judicial evolution towards enhancing the protection of private contractors from administrative abuse, even within the framework of its discretionary power in the digital environment

B) Judicial Review of Electronic Termination Without Fault (Digital Termination for Convenience)

Within the evolving framework of electronic administrative contracts, the public administration retains the inherent authority to terminate a contract even in the absence of any fault by the contractor, provided that such termination is justified by considerations of the digital public interest. This prerogative, often referred to as “electronic termination for convenience,” enables the administration to unilaterally end contractual relations when required by overriding technological or administrative imperatives—such as ensuring platform security, modernizing digital infrastructure, or enhancing transparency and interoperability within electronic procurement systems.

This mechanism reflects the traditional doctrine of *résiliation pour motif d'intérêt général* (termination for reasons of public interest), now transposed into the digital environment. It underscores the notion that the administration, as a guardian of the public good, must retain sufficient flexibility to adapt contractual arrangements to evolving technological, security, or regulatory needs within the digital governance ecosystem.

However, while this authority constitutes a privilege of public power (*prérogative de puissance publique*), it is not absolute. Its exercise remains subject to judicial oversight by the administrative courts, particularly regarding the legality of the stated grounds and the existence of genuine and proportionate justifications rooted in the public interest. The administrative judge thus plays a pivotal role in ensuring that the invocation of “digital public interest” does not become a pretext for arbitrary or excessive administrative action.

In reviewing such cases, the court examines whether the termination decision was supported by objective digital necessity—for example, a verified cybersecurity threat, the mandatory upgrade of national e-contracting systems, or compliance with higher regulatory or ethical standards in electronic governance. The judicial assessment focuses on ensuring that the decision aligns with the principles of proportionality, good faith, and transparency, which remain cornerstones of both traditional and digital administrative law.

Accordingly, while the administrations ability to terminate electronic contracts for convenience safeguards the adaptability and continuity of public digital services, it simultaneously generates a corresponding duty of financial reparation toward the contractor for any direct losses incurred. This compensation principle maintains the equilibrium of contractual relations, affirming that even within the realm of e-administration, the pursuit of the public interest must coexist with the preservation of individual rights and legitimate expectations ⁽⁸⁾.

_ Verification of Digital Public Interest Grounds:

Electronic termination is considered lawful provided it is justified by a genuine reason pertaining to the public interest in the digital environment, such as a failure of the contracts information system or the need to restructure the government platform in a way that prevents the continuation of the contractual relationship. This is conditional upon the absence of abuse or digital misuse of power (Al-Tamawi, 2008, p. 531).

The French Council of State established this principle in rulings such as *Chantiers de Nazaire* (January 9, 1952) and *Cham Bouvet* (January 23, 1953), emphasizing that the public interest – in its modern conception – is the objective that justifies terminating the administrative contract, even in the digital sphere.

These modern digital scenarios include the discontinuation of shared information systems or changes in the management model of the digital public service necessitating the termination of associated electronic contracts.

Algerian legislator has codified this principle in Article 150 of Presidential Decree 15-247, which states: "The contracting authority may unilaterally terminate the contract when justified by reasons of public interest, even in the absence of any fault by the co-contracting party."

However, the text does not precisely define the instances constituting the digital public interest, leaving room for the discretion of the electronic administration and obliging the administrative judge to verify the genuineness of the digital cause without extending to an assessment of its technical suitability.

Legality of the Discretionary Electronic Termination Decision:

The discretionary electronic termination decision is subject to the same elements of legality as traditional administrative acts: competence, electronic form, cause, object, and purpose (Al-Tamawi, *General Theory of Administrative Decisions*, 2004, p. 182).

If the administration violates any of these elements, it incurs digital contractual liability. Typically, the judge does not possess the power to annul the decision but is limited to determining fair electronic compensation.

An exception to this arises when the electronic administrative contract contains an explicit clause permitting termination without compensation, in which case the administrations obligation to compensate ceases ⁽⁹⁾.

French jurisprudence witnessed a qualitative development in its landmark ruling *Commune de Béziers* (March 21, 2011), where it allowed the administrative judge – in exceptional circumstances – to balance the drawbacks of termination against the requirements of the digital public interest. It even permitted the reinstatement of the electronic contractual relationship if challenged within sixty days from the date of electronic notification.

This judicial precedent represents a fundamental shift in the concept of judicial review of electronic administrative contracts, reflecting increased flexibility in balancing the power of the digital administration with the protection of the electronic contractor amidst the demands of digital transformation.

Section II: Judicial Termination of Electronic Administrative Contracts as the Cornerstone of Administrative Judicial Oversight

In the realm of electronic administrative contracts, the contractor is not without recourse in the face of administrative prerogatives. Under certain legally and factually justifying conditions, the contractor may seek judicial termination of the electronic contract before the competent administrative court. Such an action falls squarely within the jurisdiction of the *cour de pleine juridiction* (court of full jurisdiction), which possesses the authority to adjudicate disputes encompassing both the legality and the substantive consequences of the administrative relationship.

The administrative judge in this context exercises comprehensive competence over all disputes arising from the formation, performance, and termination of electronic administrative contracts. This includes claims relating not only to the contracts principal obligations but also to all ancillary or derivative matters, such as:

The appointment of a technical or digital expert to assess the performance of electronic obligations or the operation of e-platforms;

The suspension of an electronic termination decision, pending a final ruling on its legality or proportionality; and

The verification of a contractor's digital status within the electronic contracting system, particularly in cases involving suspension, delisting, or data integrity disputes.

Moreover, the jurisdiction of the electronic administrative judiciary extends to urgent or provisional applications (*référé administratif électronique*) when required to preserve digital rights, prevent imminent harm, or avert technical or cybersecurity risks that may be difficult or impossible to remedy at a later stage. In such cases, the administrative judge may issue interim measures—such as the restoration of access to an e-procurement account, the freezing of data deletion, or the suspension of algorithmic decision effects—to ensure continuity of service and procedural fairness within the digital contracting framework.

This judicial competence reflects the broader evolution of administrative justice in the digital era, whereby traditional doctrines of legality, proportionality, and procedural protection are reinterpreted through the lens of digital governance. The administrative judge thus emerges not only as a guarantor of legality but also as a guardian of digital integrity, ensuring that technological

innovation does not undermine the fundamental principles of fairness, transparency, and the right to effective judicial protection in e-administration ⁽¹⁰⁾.

Contrary to the administrations authority to unilaterally terminate the administrative contract, the contractor does not possess this right. The contractor must resort to the judiciary to demand termination, whether in cases of digital force majeure, contractual breach by the administration, or even when required by the digital public interest.

A) Force Majeure in the Electronic Administrative Contract

The concept of force majeure constitutes one of the fundamental pillars of contract law, serving as a key legal mechanism that exonerates a contracting party from liability when the performance of its obligations becomes objectively impossible due to exceptional and unforeseeable circumstances. Traditionally, force majeure is defined as an external event, beyond the control of the parties, that is unforeseeable, irresistible, and renders performance absolutely impossible. It functions as a safeguard within contractual relations, ensuring that parties are not held responsible for non-performance when such failure arises from circumstances that no amount of diligence, foresight, or prudence could have prevented.

In classical doctrine, the essential conditions for invoking force majeure are threefold:

Externality – the event must originate outside the sphere of the debtors control;

Unforeseeability – the event must be one that a prudent party could not have reasonably anticipated at the time of contracting; and

Irresistibility – the event must make the execution of the contractual obligation absolutely impossible, not merely more difficult or onerous.

The rationale underlying this doctrine lies in the principle of equitable risk allocation, whereby neither party should bear the consequences of an event that fundamentally frustrates the contracts performance and lies entirely beyond human control. Historically, examples include natural disasters, wars, governmental acts, or major economic disruptions—events that prevent the very execution of the contract, thereby extinguishing the debtors liability.

In contemporary legal discourse, particularly within the framework of electronic administrative contracts, the scope of force majeure has expanded to encompass digital contingencies—such as large-scale cyberattacks, systemic platform failures, data corruption, or prolonged network outages—that may paralyze the digital infrastructure necessary for contract execution. While these events remain exceptional, their increasing frequency underscores the need to reinterpret traditional legal concepts within the technological realities of e-governance.

Thus, force majeure continues to operate as a cornerstone of contractual justice, balancing the principle of liability with the principle of fairness, and adapting its application to both physical and digital domains of administrative contracting ⁽¹¹⁾.

This definition establishes a high threshold, emphasizing that mere difficulty or increased cost is insufficient to invoke the doctrine.

Digital Transformation of Force Majeure

In the modern context, particularly concerning electronic administrative contracts, the concept of force majeure evolves to encompass phenomena specific to the digital domain. Events qualifying under this principle now include catastrophic occurrences such as comprehensive cyberattacks, massive technical system failures, or the complete collapse of core communication infrastructure. When these events satisfy the stringent legal criteria, they lead to the automatic and

non-compensatory dissolution of the electronic contract. This reflects the reality that such digital catastrophes can render the performance of an electronic obligation permanently and absolutely impossible.

Strict Criteria for Invocation

For the successful establishment of force majeure, the event must meet three cumulative and rigorous conditions, applicable equally to the digital contractor:

Externality: The event must be completely external to the will and control of the electronic contractor. It cannot be due to internal negligence or foreseeable operational risks.

Unforeseeability and Impossibility: The event must have been impossible to foresee and impossible to avoid or mitigate even by exercising the highest standard of reasonable technical diligence and deploying available cybersecurity and technical measures.

Absolute Impossibility of Performance: Crucially, the event must cause an absolute impossibility of performance, not just a financial hardship or increased technical complexity. If the contractor can technically perform the service, albeit at a higher cost, force majeure does not apply.

Distinction from the Theory of Unforeseen Circumstances (Imprévision)

Jurisprudence maintains a vital distinction between force majeure and the theory of unforeseen circumstances (Théorie de l'Imprévision). If an event was either foreseeable or technically manageable, even if exceptionally burdensome, the contract is not terminated. Instead, the theory of unforeseen circumstances comes into play. This theory requires the rebalancing of the contracts financial equilibrium to equitably distribute the unanticipated burden between the parties, thereby ensuring the contracts continuation rather than its termination ⁽¹²⁾

. This principle prioritizes the stability and continuation of essential public services.

The Algerian Council of State has consistently upheld this strict distinction. For example, in its decision of March 8, 1999, in the case of B.T. v. The Executive Delegate of the Municipality of Skikda, the Council rejected a plea of force majeure based on rising construction material prices. The court found that this situation "lacked the character of exceptionality or surprise," concluding that the financial volatility did not meet the thresholds of unforeseeability and absolute impossibility necessary to discharge the contract.

Judicial Flexibility and the Digital Public Interest

The administrative judge, when reviewing electronic administrative contracts, maintains a degree of judicial flexibility, especially given the continuous nature of public service. This means the judge may postpone a ruling on termination to explore alternatives. This pause allows for potential:

Rebalancing of the financial terms between the parties.

Implementation of alternative technical solutions that can enable the contract to continue operating within its digital framework ⁽¹³⁾.

This pragmatic, service-oriented approach reflects the unique nature of electronic administrative contracts, which are characterized by technical fluidity and the paramount need to safeguard the continuity of the digital public interest. The contractors ultimate relief from liability is thus conditioned upon proving that the technical obstacle was an external, unforeseeable event that was digitally and technically impossible to avert despite all reasonable efforts.

B) Judicial Termination for Breach of Electronic Contractual Obligations

The administration, like any contracting party, is subject to potential breach of its obligations within an electronic administrative contract. Examples of such breaches include delaying digital payments, failing to provide the necessary electronic platform for contract execution, or unjustifiably suspending the digital systems operation.

The Prohibition of Unilateral Sanction

Notwithstanding any breach committed by the administration, the electronic contractor is strictly prohibited from unilaterally imposing sanctions upon the administration or suspending the performance of their contractual obligations by invoking the principle of non-performance (*exceptio non adimpleti contractus*). This prohibition represents one of the most distinctive features of public administrative law, clearly demarcating it from the principles governing private contractual relationships.

In private law, the *exceptio non adimpleti contractus* operates as a defensive mechanism, enabling one party to withhold performance until the other fulfills its corresponding obligations, thereby preserving contractual balance and reciprocity. However, within the framework of administrative contracts, this principle finds no application. The reason lies in the very nature and purpose of such contracts, which are intrinsically and inseparably linked to the continuity, regularity, and efficiency of public service.

Administrative contracts—whether traditional or electronic—are not concluded solely for the mutual benefit of the parties but rather in service of the public interest (*intérêt général*). Consequently, allowing a contractor to unilaterally suspend performance in response to administrative non-compliance would risk disrupting essential public functions that must operate without interruption or delay, such as the maintenance of digital infrastructure, public databases, or e-government service delivery systems.

This doctrinal restriction thus ensures that the public service mission remains uninterrupted, even in cases where the administration itself is in breach of contractual obligations. The contractor's remedies, therefore, are not self-executing but judicially supervised, to be pursued before the administrative courts of full jurisdiction, which may award compensation or adjustment without compromising the continuity of the service.

In the digital context, this rule acquires heightened importance. Interruptions to electronic administrative platforms—such as unilateral suspension of data transmission, blocking system access, or withdrawal of technical support—could paralyze critical state functions or compromise data integrity. Accordingly, the administrative legal order imposes an asymmetric balance of obligations, privileging the public interest over contractual reciprocity, while compensating the contractor through subsequent judicial review and indemnification mechanisms.

Thus, the exclusion of the *exceptio non adimpleti contractus* from electronic administrative contracts reaffirms the supremacy of public service continuity, ensuring that technological modernization and digital contracting remain firmly anchored in the fundamental values of administrative law: legality, continuity, and the primacy of the public interest ⁽¹⁴⁾.

Judicial Termination: The Ultimate Sanction

The most severe remedy available to the contractor within the framework of an electronic administrative contract is the judicial termination of the contract through electronic proceedings. However, the administrative judge exercises this power with exceptional restraint. Judicial termination represents an extraordinary measure, granted only under strict and narrowly defined

conditions, as it directly affects the continuity and stability of the public service — a cornerstone principle of administrative law.

To obtain such relief, the contractor bears the burden of establishing the existence of a gross digital fault (*faute numérique grave*) attributable to the administration. This concept refers to a grave and undeniable failure that strikes at the very essence of the contractual relationship and renders its continuation incompatible with the principles of legality, fairness, and administrative good faith.

Examples of a gross digital fault may include:

The unjustified and complete abandonment by the administration of the electronic project, resulting in the paralysis of the contractual process or the permanent suspension of the public service mission entrusted to the digital platform; or

A prolonged and unwarranted suspension of technical or operational works without any legitimate justification linked to the public interest, such as system upgrades, cybersecurity requirements, or financial constraints duly authorized by law.

These instances demonstrate the exceptional gravity required to justify judicial termination. The administrative judge, in exercising full jurisdiction, will assess whether the administrations conduct represents a breach so fundamental that it undermines the digital equilibrium of the contract and violates the principle of administrative loyalty (*principe de loyauté administrative*).

By maintaining this high evidentiary threshold, administrative jurisprudence safeguards the stability and continuity of the public service, ensuring that termination remains a remedy of last resort, reserved exclusively for the most egregious and irremediable digital breaches. In doing so, the administrative judiciary reaffirms the delicate balance between two competing imperatives: the protection of public interest and service continuity on one hand, and the preservation of contractual justice and accountability in the digital domain on the other

Legislative and Jurisprudential Precedent

This legal framework is firmly entrenched in Algerian administrative law, where long-standing principles originally conceived for traditional public contracts have been progressively adapted to the electronic environment. A particularly illustrative precedent can be found in Article 34 of the Ministerial Decision dated November 21, 1964, which served as one of the earliest legal foundations for regulating administrative termination in Algeria.

The article provided that the contract may be terminated if the administration decided to postpone the execution of works for more than one year without valid justification. Importantly, while this provision recognized the contractors right to request termination under such circumstances, it simultaneously upheld the administrations prerogative to act in the public interest, thereby establishing a balanced mechanism between administrative discretion and contractual fairness.

Crucially, the same article went further to entitle the contractor to compensation where tangible and demonstrable damage could be proven as a direct consequence of the administrative delay. This dual approach—allowing termination while guaranteeing compensation—illustrates an early legislative effort to reconcile two competing values:

The supremacy of the public interest, embodied in the administrations ability to adapt or suspend projects in response to changing public needs; and

The protection of the contractors financial rights, ensuring that the burden of administrative delay does not fall unjustly upon the private party.

This equilibrium, established decades before the digital transformation of public administration, now extends to electronic administrative contracts, where similar scenarios may arise—such as indefinite suspension of online project implementation, delay in digital platform activation, or administrative failure to provide necessary technical access. The doctrinal continuity between the 1964 decision and current digital contracting regulations highlights the adaptability of Algerian administrative law in maintaining fairness while preserving public service continuity in both physical and electronic domains.

Contractors Continuing Obligation

Even when the contractor faces prolonged administrative delay or digital suspension, they remain bound by the continuing obligation of cooperation and service continuity inherent in administrative contracts. This principle prohibits the contractor from unilaterally ceasing performance or abandoning digital operations without prior judicial authorization. The rationale is that administrative contracts—particularly in their electronic form—are instruments serving the public interest, and any interruption in their performance may compromise essential state functions or digital service delivery.

Accordingly, while the contractor may pursue judicial remedies or compensation, they must continue to ensure minimal operational functionality, safeguard data integrity, and maintain system readiness until the administrative authority or the court formally authorizes termination. This enduring obligation embodies the broader public law principle that contractual equilibrium must never come at the expense of public service continuity, a doctrine that continues to shape the evolution of Algerian and comparative administrative law in the digital era

A fundamental corollary of the prohibition on unilateral action is the electronic contractors obligation to continue performing its duties until a formal judicial termination ruling is issued. If the contractor suspends performance prior to the ruling, this act constitutes an electronic contractual fault, regardless of the administrations initial breach, thereby incurring the contractors own liability.

In essence, while the administration is accountable for its digital faults, the integrity of the public service demands that the contractor maintain the operational status of the service until the courts formally intervene. The contractors sole remedy is to seek judicial redress, not self-help.

C) Judicial Termination due to the Administration Exceeding its Electronic Modification Power

The legal framework governing Electronic Administrative Contracts is fundamentally shaped by the principle of mutability, granting the public administration a significant prerogative: the inherent power to unilaterally modify the contracts obligations during its execution. This power is essential for the effective realization of the public interest ⁽¹⁵⁾. This unilateral right to alter the terms constitutes a notable derogation from the core civil law maxim, *pacta sunt servanda* (agreements must be kept), underscoring the dominance of the public service imperative over contractual stability.

_Constraints on the Administrations Power of Modification

Despite its formidable nature, the administrations power of modification is not absolute. It is strictly circumscribed by a set of legal and technical controls designed to protect the contractor and ensure the integrity of the procurement process. These constraints mandate that:

The modification must be formally decreed by the competent digital administrative authority vested with the requisite legal mandate.

Execution of the modification must be securely documented within the official, authenticated electronic system, ensuring traceability and verifiability.

The modification must not effect a fundamental alteration (*dénaturation*) of the contracts object, effectively transforming it into an entirely new agreement.

It must strictly comply with the maximum financial limit for modifications, which is legally capped at 10% of the original contract value, as stipulated under Article 139 of Presidential Decree 15-247.

Article 136 of the same Decree formally codifies this permissible alteration, defining a modification as a "contractual annex subordinate to the contract, concluded to increase or decrease services, or to modify one or more clauses in the original contract."

Rigorous Judicial Oversight and Sanctions

The administrative judiciary plays a pivotal role by subjecting the administrations exercise of its electronic modification power to stringent a posteriori review. The administrative judge meticulously verifies the modifications legality and its direct nexus to the digital public interest. Furthermore, the judge critically assesses the financial ramifications and determines whether the administration has transgressed its statutory limits.

Should the judicial review conclude that the modification was arbitrary or that the administration exceeded the permissible modification ceiling, the judge has the authority to impose severe sanctions. These may include a ruling to terminate the electronic contract or a judgment compelling the administration to provide full compensation for the material, technical, and financial damages sustained by the contractor. This protective posture aligns with established jurisprudence, such as the Algerian Council of States decision of March 8, 1999, in the case of B.T. v. The Executive Delegate of the Municipality of Skikda.

Financial and Legal Consequences of Judicial Termination

A decree of judicial termination in administrative law typically carries retroactive effect to the date the contractor filed the lawsuit. The resulting indemnification is calculated based on two components: the contractors verifiable actual losses (*damnum emergens*) and their proven lost profit (*lucrum cessans*). Moreover, there is the potential for the accrual of default interest to be added to the final sum, particularly once the compensation amount is definitively quantified (liquidated).

The availability of judicial termination for the electronic administrative contract represents an advanced mechanism for achieving technical and financial justice against the backdrop of inherent administrative prerogatives. It powerfully underscores the creative and balancing role of the administrative judge in reconciling the states digital power with the imperative of the public interest. In the ongoing digital transformation of public services, the administrative judge emerges as both a guardian of legality and a crucial guarantor of the continued, stable, and just provision of digital public services, thereby reinforcing the very foundations of the electronic rule of law.

Conclusion:

This study establishes that its primary focus lies in the judicial termination of electronic administrative contracts, which is not merely a subsidiary remedy, but a fundamental pillar of contractual justice in the digital era. While the administration maintains the prerogative of unilateral rescission, the analysis demonstrates that the administrative judiciary functions as the ultimate arbiter of digital legality. Judicial intervention has evolved beyond traditional oversight, positioning the administrative judge as a guardian of digital equilibrium, tasked with assessing both the legal and technical validity of contractual breaches.

Furthermore, the study concludes that judicial termination constitutes a vital protective mechanism for contractors in the digital environment, particularly in cases of administrative overreach or technical failure. In light of ongoing digital transformation, the role of the administrative judge has expanded to include the annulment of disproportionate measures and, in certain jurisdictions, the reinstatement of the contractual relationship. Ultimately, the effectiveness of electronic administrative contracts depends on a robust judicial framework capable of reconciling the demands of public service with the protection of contractors digital rights.

Here is the translation of the recommendations aimed at addressing regulatory gaps and balancing administrative powers with digital contractor guarantees in the virtual environment :

1. Updating Legislative Frameworks for Public Procurement :

Reviewing and developing existing public procurement laws and regulations (such as Presidential Decree No. 15-247 in Algeria) to include specific, detailed legal provisions governing electronic administrative contracts. These provisions should clearly define the procedural and substantive rules for their formation, performance, and digital termination.

2. Defining Modern Digital Concepts Precisely :

Establishing clear and precise legal definitions for emerging technical terms and circumstances, such as « digital public interest, » « gross digital fault » (e.g., data manipulation or unjustified failure to comply with platform technical requirements), and « digital force majeure » (e.g., major cyberattacks or irreparable software failures). This will help limit arbitrary interpretations and protect the rights of both parties.

3. Enhancing the Security and Reliability of Digital Platforms :

Investing in securing the infrastructure of electronic public procurement platforms, while making the use of encrypted electronic signatures and certified electronic timestamping mandatory. This ensures the legal validity of electronic formal notices (*mises en demeure*) and notifications, making them secure against denial or technical tampering.

4. Training the Administrative Judiciary in Technical Aspects :

Developing specialized training programs for administrative judges in fields such as information technology, cybersecurity, and database management. This will enable them to understand complex technical disputes and effectively and objectively evaluate digital evidence during their judicial review of termination decisions.

5. Establishing Clear Mechanisms for Digital Financial Compensation :

Regulating clear rules for assessing compensation resulting from unilateral electronic termination or termination for public interest (without fault on the contractor's part)—especially when projects are halted due to sudden updates in government digital infrastructure. This preserves the financial equilibrium of the contract and encourages businesses to engage digitally with the administration.

6. Setting Regulations for the Contractor's Obligation of Continuity :

Drafting clear regulatory frameworks defining the scope of the digital contractor's obligation of continuity in service provision (such as not interrupting data flows or blocking system access) during disputes and before a final judicial termination ruling is issued. This ensures the continuity of the public digital service without causing unjustified harm to the contractor.

Citations:

- ¹ _ Decision dated November 21, 1964, Article 34, Al-Jarida al-Rasmiyya, No. 6, dated January 19, 1965.
- ² _ Al-Sanari, Muhammad 'Abd al-'Al. Mabadi wa Ahkam al-'Uqud al-Idariyya [Principles and Provisions of Administrative Contracts]. Dar al-Nahda al-'Arabiyya, Cairo, 2010. p. 241
- ³ _ Nassar, Jabir Jad. Al-'Uqud al-Idariyya [Administrative Contracts], 2nd Edition. Dar al-Nahda al-'Arabiyya, Cairo, 2014. p. 86
- ⁴ _ Bouachik, Ahmed. "Dawr Qadi al-'Aqd wa Munaza'at Faskh al-'Aqd al-Idari" [The Role of the Contract Judge and Disputes over Termination of the Administrative Contract]. Al-Majalla al-Maghribiyya li-l-Idarah al-Mahalliyya wa al-Tanmiya, Issue 133, 2017. p. 161
- ⁵ _ Ministerial Decision dated March 28, 2011, Al-Jarida al-Rasmiyya al-Jaza'iriyya, No. 15, Year 2011. p. 3
- ⁶ _ Algerian Council of State Decision No. 077626, issued on 21/11/2013.
- ⁷ _ Al-Sanari, Muhammad 'Abd al-'Al. Mabadi wa Ahkam al-'Uqud al-Idariyya [Principles and Provisions of Administrative Contracts]. Dar al-Nahda al-'Arabiyya, Cairo, 2010. p.238
- ⁸ _ Nassar, Jabir Jad. op.cit. p257.
- ⁹ _ Al-Sanari , op.cit, p. 250
- ¹⁰ _ Salim, Zaynab. Ar-Raqaba al-Qada'iyya 'ala al-'Aqd al-Idari fi Marhalat al-Tanfith [Judicial Oversight of the Administrative Contract in the Execution Stage]. Dar al-Jami'a, 2018., p. 135
- ¹¹ _ Al-Shakili, Yusuf bin Musbih. Al-'Uqud al-Idariyya: Dirasah Muqaranah [Administrative Contracts: A Comparative Study]. Dar al-Fikr al-Jami'i, 2007, p. 319
- ¹² _ Bouamrane, Adel. An-Nathariya al-'Amma lil-Qararat wal-'Uqud al-Idariyya [General Theory of Administrative Decisions and Contracts]. Dar al-Jami'a al-Jadida, 2015, p 116
- ¹³ _ Al-Shakili, opciT , p. 315
- ¹⁴ _ Al-Maamari, Muhammad bin Saeed. An-Nitham al-Qanuni lil-'Uqud al-Idariyya fi al-Qanun al-Muqaran [The Legal System of Administrative Contracts in Comparative Law]. Dar al-Nahda al-'Arabiyya, 2012., p. 428
- ¹⁵ _ Al-Maamari, op.cit., p. 428.

1- Bibliography:

A- Books:

- 1 Bouamrane, Adel. An-Nathariya al-'Amma lil-Qararat wal-Uqud al-Idariyya General Theory of Administrative Decisions and Contracts. Dar al-Jamia al-Jadida, 2015.
- 2 Al-Tamawi, Sulayman. Al-Asas al-'Amma lil-Uqud al-Idariyya General Foundations of Administrative Contracts. Dar al-Fikr al-Arabi, Cairo, 2008.
- 3 Al-Tamawi, Sulayman. An-Nathariya al-'Amma lil-Qararat al-Idariyya General Theory of Administrative Decisions. Dar al-Fikr al-Arabi, Cairo, 2010.
- 4 Al-Sanhuri, Abd al-Razzaq. Nathariyat al-Aqd Theory of Contract, Vol. 2, 2nd Edition. Dar Ihya al-Turath al-Arabi, 1998.
- 5 Al-Maamari, Muhammad bin Saeed. An-Nitham al-Qanuni lil-Uqud al-Idariyya fi al-Qanun al-Muqaran The Legal System of Administrative Contracts in Comparative Law. Dar al-Nahda al-Arabiyya, 2012.
- 6 Al-Sanari, Muhammad Abd al-'Al. Mabadi wa Ahkam al-Uqud al-Idariyya Principles and Provisions of Administrative Contracts. Dar al-Nahda al-Arabiyya, Cairo, 2010,p 57.
- 7 Nassar, Jabir Jad. Al-Uqud al-Idariyya Administrative Contracts, 2nd Edition. Dar al-Nahda al-Arabiyya, Cairo, 2014.
- 8 Al-Banna, Mahmoud Atef. Al-Qada al-Idari – Dirasat fi al-Uqud al-Idariyya Administrative Judiciary – Studies in Administrative Contracts. Dar al-Nahda al-Arabiyya, Cairo, 2010.

- 9 Al-Shakili, Yusuf bin Musbih. Al-Uqud al-Idariyya: Dirasah Muqaranah Administrative Contracts: A Comparative Study. Dar al-Fikr al-Jamii, 2007.

B - Newspaper articles:

1. Bouachik, Ahmed. "Dawr Qadi al-Aqd wa Munazaat Faskh al-Aqd al-Idari" The Role of the Contract Judge and Disputes over Termination of the Administrative Contract. Al-Majalla al-Maghribiyya li-l-Idarah al-Mahalliyya wa al-Tanmiya, Issue 133, 2017.
2. Salim, Zaynab. Ar-Raqaba al-Qadaiyya ala al-Aqd al-Idari fi Marhalat al-Tanfith Judicial Oversight of the Administrative Contract in the Execution Stage. Dar al-Jamia, 2018.

D - Legal Texts:

- 1 _ قرار وزاري مؤرخ في 28 مارس 2011، الجريدة الرسمية للجمهورية الجزائرية، العدد 15، سنة 2011. Ministerial Decision dated March 28, 2011, Official Gazette of the Algerian Republic, No. 15, 2011.
- 2 _ قرار مؤرخ في 21 نوفمبر 1964، المادة 34، الجريدة الرسمية للجمهورية الجزائرية، العدد 6، الصادر بتاريخ 19 يناير 1965. Decision dated November 21, 1964, Article 34, Official Gazette of the Algerian Republic, No. 6, January 19, 1965.
- 3 _ قرار مجلس الدولة الجزائري، مؤرخ في 8 مارس 1999، قضية المندوب التنفيذي لبلدية سكيكدة، الاجتهاد الجزائري في القضاء الإداري، الجزء الرابع، الطبعة الثانية. Algerian Council of State Decision, March 8, 1999, Case of B.T v. Executive Delegate of the Municipality of Skikda, Algerian Jurisprudence in Administrative Law, Vol. 4, 2nd ed..
- 4 _ قرار مجلس الدولة الجزائري رقم 063683، صادر بتاريخ 12 جانفي 2012، قضية بلدية العلمة. Algerian Council of State Decision No. 063683, issued on January 12, 2012, Case of Commune of El Eulma v. H.A.
- 5 _ قرار مجلس الدولة الجزائري رقم 077626، الصادر بتاريخ 21 نوفمبر 2013. Algerian Council of State Decision No. 077626, issued on November 21, 2013).