

Administrative Liability for Electronic Damages

مسؤولية الإدارة عن الأضرار الإلكترونية

Chahrazad GOUSTO*, Faculty of Law and Political Sciences, Djilali Liabes University

-Sidi Bel Abbes-

chahrazad.gousto@univ-sba.dz

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Abstract:

The advancement of technology and digitization has led to reforms at the administrative level by mandating the use of electronic tools in delivering services to beneficiaries. As a result, the nature of administrative activities has changed, with the exchange of information and data now occurring through various electronic means and tools, characterized by undeniable speed and simplicity.

Since legal liability constitutes one of the fundamental pillars for ensuring the effectiveness of administrative activities by maintaining discipline in the management of functional tasks, the impact of these electronic means on the liability system arising from the administration's exercise of its administrative activities becomes evident. Therefore, the importance of this research paper lies in uncovering the extent to which the legal liability system aligns with the developments in administration, particularly concerning administrative liability. Additionally, it aims to clarify the foundations on which the administration's liability for its electronic actions is based.

Key words: legal liability – administrative liability – e-administration – administrative activities – electronic Damage.

Introduction:

The use of digitization and information technology has become an inevitable necessity for administrative activities to provide services to citizens with speed, efficiency, and transparency, which has led to the emergence of the concept of electronic administration. Administrative activities have transitioned from traditional methods to electronic or digital approaches that rely on various electronic tools and media for information and data exchange.

This transformation has impacted the system of liability arising from the administration's activities, introducing the novel concept of electronic liability.

Like any administrative activity, the emergence of these new administrative functions may cause harm to others, raising the issue of the administration's liability for such electronic damages. Legal liability constitutes one of the fundamental pillars of the effectiveness of administrative activities by ensuring discipline in managing functional tasks.

Thus, the significance of this research paper lies in uncovering the extent to which the legal liability system aligns with developments in administration, particularly regarding administrative liability. Additionally, it seeks to clarify the foundations upon which the administration's liability for its electronic actions is based.

This study aims to address the following question: Is the current legal framework for liability sufficient to establish the administration's responsibility for its use of electronic means, thereby ensuring compensation for individuals harmed by electronic damages?

In our study, we will employ a descriptive and analytical approach suitable for presenting the legal concepts related to the topic. Additionally, we will analyze legal texts within a framework structured around two main axes.

* Corresponding Author

The first axis addresses the conceptual framework of legal liability in electronic administration, while the second axis examines the forms of administrative liability for damages resulting from electronic activities.

1-Tilte I: The Conceptual Framework of Legal Liability in Electronic Administration.

To establish a clear understanding of the concept of legal liability in electronic administration, we begin by analyzing the relevant terminology (*First Subtitle*), followed by examining the legal basis for liability arising from the activities of electronic administration (*Second Subtitle*).

1.1- First Subtitle: Electronic Administration and Legal Liability-Terminological Analysis-

When defining electronic administration, we encounter varying opinions among legal scholars. This divergence stems from the specific aspects each scholar emphasizes. Some focus on the tools and technologies used, others on the functions performed, and some consider all these elements collectively. Nonetheless, electronic administration can be defined as a modern alternative to traditional administration, relying on modern communication technologies to deliver citizen services.

As for liability, linguistically, it refers to the state of being accountable for actions and behaviors for which an individual is responsible for their outcomes. Accordingly, liability implies a specific obligation owed by one person to another. The term "to bear" indicates the process of assuming the substance of the obligation.

This process may be dictated by an individual's morality or conscience when their behavior violates established ethical standards, leading to psychological repercussions such as guilt and remorse. This is known as "moral responsibility," which derives from its ethical source.

However, if the obligation arises from the law, the process of assuming responsibility is imposed by legal provisions and is enforced by those subject to it (individuals, administrations, courts, etc.), thus constituting "legal responsibility."¹

In legal terminology, responsibility refers to the obligation of an individual who has caused harm to another person to bear the consequences of their actions by restoring the situation to what he has been or by means of material compensation.²

Since the law encompasses various legal branches, legal liability within it is characterized by the legal branch whose rules impose the obligation to redress harm. For instance, if this is carried out through the provisions of civil law by conducting a financial or material settlement between the account of the harm-causer and that of the harmed party -deducting the value of the harm from the former and adding it to the latter -we are dealing with civil liability.

However, if this process is governed by criminal law provisions, whereby an amount is forcibly deducted from the offender's account in favor of society to redress the harm caused, or the offender is temporarily removed or permanently excluded from society to eliminate the anxiety and danger arising from their freedom, we are dealing with "criminal liability."

Accordingly, when we speak of "administrative liability," we understand it as "the imposition by administrative law rules on public administration to redress a specific harm."³

The issue that arises in this context is defining the concept and scope of legal liability in electronic administration.

The advancement in information technology is one of the most significant features of the revolution witnessed by the contemporary world. Within a short period, machines have deeply permeated various aspects of human life, bringing noticeable changes to the work methods and activities of states and their institutions, including administrative operations. As a result, administration transitioned from a traditional to an electronic format. This transformation

necessitates the establishment of a mechanism to redress harm caused to individuals dealing with this newly introduced format. Consequently, there has emerged an urgent need to adopt the concept of legal liability for damages resulting from the activities of electronic administration as an independent legal system, often referred to as electronic liability. This term reflects the connection between the electronic means currently employed by electronic administration and liability.

The scope of this liability involves two entities: either the public employee or the administrative body.

✓ **Regarding the public employee:**

This refers to an individual appointed by a public authority to hold a permanent administrative position in a public facility managed by the state or one of its public legal entities. Electronic liability that may arise concerning the public employee could be civil, criminal, or disciplinary liability, depending on the type of error committed. Such error must directly relate to the electronic means used by the electronic administration or be committed through the use of these means.

✓ **Regarding the administrative body:**

As for the legal liability that may arise concerning the administrative body, it pertains to the liability of this entity for its actions, whether lawful or unlawful, in connection with its use of electronic means that have caused electronic harm to others. This liability may be based either on fault or strict liability.

1.2- Second Subtitle: The Legal Basis for Liability Arising from the Activities of Electronic Administration.

It can be said that the legal liability invoked against electronic administration pertains to its harmful actions arising from the use of electronic means. Consequently, it shares the same foundation as administrative liability in general and assumes one of its forms - either administrative liability based on fault, which constitutes the general framework of administrative liability, or administrative liability without fault, reflecting the evolution of the concept of liability.

1.2.1- Establishing Liability on the Concept of Proven Fault

Administrative liability based on fault is among the most intricate topics in the field of administrative liability, given that public facilities or administrations perform their administrative functions through individuals. These activities or operations often result in harm to others, either through personal fault attributed to the employee or operational fault attributed to the facility itself.

Fault in administrative liability has been defined as a breach of a prior obligation by a public employee due to negligence or carelessness, which is attributed to the facility, thereby establishing the facility's administrative liability on the basis of operational fault⁴.

If we were to apply the aforementioned definition to fault in the activities of electronic administration, it can be said that electronic fault refers to a breach of a prior legal obligation that establishes the administration's liability when it causes harm to others as a result of the electronic facility's use of electronic means and devices.

To determine whether the electronic public facility bears administrative liability, it is necessary to distinguish between personal fault and operational fault. The latter has expanded at the expense of personal fault with the emergence of the theory of combining faults and, subsequently, the theory of combining liabilities.

- **Personal Fault.**

Personal fault is the harmful act for which the public agent is personally liable before ordinary courts and under the provisions of private law, as it is distinct from the exercise of their duties. It is also defined as an act revealing the agent's intent to cause harm and indicating that their activity is driven by a personal, non-professional motive, such as a public employee unjustifiably refusing to register a user's application on the electronic platform.

- Operational Fault

Operational fault can be considered a fault attributed to the public facility, even though it was materially committed by a public agent. This is because the fault occurs either during or in connection with the exercise of their duties. It takes three forms:

- **Poor performance of the service by the facility:** For example, a malfunction or defect in the website or electronic platform.
- **Delay in the facility's performance of the service:** This could result from the incompetence, negligence, or carelessness of public agents, such as delays in processing applications submitted through the electronic platform and failure to respond within the prescribed timeframes.
- **Refusal of the facility to provide the service:** For instance, failing to activate an electronic platform and refusing to accept files at the administrative level under the pretext that the law requires electronic registration. Such refusal causes harm to the users of the facility.

In accordance with the principles of administrative liability, which establish fault as the basis for public administration's liability, the use of electronic means by the administration will inevitably lead to the commission of electronic faults. The harmed party must prove these faults, a challenging task that may result in the loss of their right to compensation despite the harm they may suffer due to their lack of competence⁵.

In this context, the judge must identify the fundamental elements surrounding the perpetrator of the fault, given that proving electronic fault is particularly difficult in the absence of precise mechanisms to determine the liability of the fault perpetrator⁶.

Relying on the concept of proven fault as the foundation for administrative liability in electronic administration has faced several criticisms, the most notable being:

- The application of fault-based liability rules for damages resulting from electronic administration activities could lead to the absence of liability for the administration responsible for the harm. This could occur for one of two reasons: either the administration's actions are lawful, or it has taken necessary precautions, thereby preventing the presence of fault or negligence, yet harm still befalls its users.
- Applying fault-based liability rules for damages caused by the use of electronic means is likely to deprive the harmed party of compensation due to the difficulty of proving electronic fault.

These criticisms lead us to explore an alternative basis for administrative liability for electronic administration activities, namely the concept of presumed fault.

1.2.2- Establishing Liability Based on the Presumption of Fault

The concept of presumed fault represents a middle ground between personal fault and objective liability⁷ - which we will address in the following section-. It entails establishing liability based on a presumed fault on the part of the responsible party, thereby relieving the injured party from the burden of proving fault. This facilitates the process for the injured party and ensures they receive compensation for damages resulting from the use of electronic means.⁸ This principle is enshrined in Article 138 of the Algerian Civil Code, which considers the administration as the custodian of machinery as long as it has the authority to oversee, use, and manage it, along with the software designated for public benefit. This presumption operates in accordance with general rules when applying the burden of proof, which falls on the party claiming otherwise. Thus, the presumption primarily favors the injured party.⁹

1.2.3- Attributing Liability for Electronic Damages Based on the Concept of Harm (Objective Liability)

In this context, liability is based on its subject matter, namely harm, with the aim of providing protection and guarantees to the injured party to compensate for damages arising from electronic administrative activities. Given the technological advancements, proving electronic fault has become increasingly difficult. Therefore, the optimal objective basis for this type of liability is

harm, which is considered a material fact that can be proven through all means of evidence. It suffices for the injured party to establish a causal link between the harm and the harmful action of the administration¹⁰.

It is worth noting that in the realm of fault-based liability, compensation is awarded for any harm suffered by the injured party. However, in no-fault liability, the harm warranting compensation must meet specific criteria, which require further examination and clarification of the concept of harm arising from the administration's use of electronic means.

- **Definition of Electronic Harm:**

Harm is generally defined as the injury inflicted upon a person due to the infringement of a right or a legitimate interest. This may include harm to one's physical integrity, property, emotions, freedom, honor, etc¹¹. Electronic harm, on the other hand, refers to damage resulting from the misuse of information technology. It is defined as "harm whose subject matter is electronic programs and data stored on a computer or on the internet"¹².

- **Characteristics of Compensable Electronic Harm:**

Naturally, not all harm gives rise to legal liability on the part of the electronic administration. Compensation cannot be granted for any harm attributed to the administration; rather, electronic harm must possess specific characteristics to warrant compensation.

- ✓ **Directness:** The harm must be a direct result of the electronic administrative activity, meaning there must be a causal link between the harm and the harmful electronic action.
- ✓ **Certainty:** The harm must be certain and confirmed. Administrative jurisprudence has excluded potential harm and accepted future harm only if its occurrence is certain, quantifiable, and comparable to confirmed harm¹³.
- ✓ **Personal Nature:** The harm must affect a specific individual or a group of individuals with a distinct status not shared by others. If the harm affects an indeterminate number of people, it becomes general and loses the specificity required to establish electronic administrative liability. For example, the leakage of information that violates the privacy of an individual or their family.
- ✓ **Infringement of a Legitimate Interest:** The harm must infringe upon a legal interest protected by law.
- ✓ **Resulting from the Use of Electronic Means:** The harm must arise from the use of computers and the software managed through them.

From the above, we conclude that the objective basis of requiring the occurrence of electronic harm is the optimal foundation for this type of liability. It overcomes the difficulty of proving electronic fault, thereby ensuring the protection and compensation of the injured party based on the harm they have suffered.

2-Tilte I: Forms of Administrative Liability for Damages Resulting from Electronic Activities

The transition from traditional administration to electronic administration will inevitably lead to the transformation of public facilities from traditional ones to those managed using electronic means. This shift may pose a risk to the interests of beneficiaries of these electronic services if the general principles governing their operation do not evolve in line with the electronic administration system. This raises the issue of administrative liability of the facility, which takes several forms, as we will attempt to outline below:

2.1- First Subtitle: Administrative Liability for Breaching the Principle of Continuity of Electronic Public Services

The principle of continuity of public services requires that these services be provided permanently and regularly. Therefore, managing the facility electronically imposes a greater obligation to deliver services, as it operates around the clock without being bound by specific

working hours. It is unaffected by official working hours, holidays, vacations, or employee strikes. Citizens can access services digitally at any time by simply connecting to the information network, which reinforces the principle of continuous and uninterrupted service delivery by the public facility.

However, managing public facilities electronically may entail certain risks that hinder the continuous and regular provision of services. For example, sudden malfunctions in electronic systems (such as internet outages or website failures) may lead to the suspension of electronic services, causing harm to beneficiaries that warrants compensation.

2.2- Second Subtitle: Administrative Liability for Breaching the Principle of Equal Access to Electronic Public Services

This principle entails that all citizens who meet the conditions for benefiting from public services should have equal access. Providing services electronically is supposed to reinforce this principle, as the use of electronic means avoids direct contact between citizens and employees, thereby eliminating discrimination in accessing services and the need for mediation or favoritism.

However, the issue that may raise administrative liability is the existence of a large segment of citizens who lack the knowledge to use computers and their applications due to poor education or the inability to afford devices that enable them to communicate with the facility and benefit from its electronic services. Additionally, the lack of comprehensive internet coverage across all regions of the country may restrict electronic services to a specific segment of the population, thereby violating the principle of equal access to public services¹⁴. Consequently, this raises the administration's liability based on fault and falls under the category of poor service delivery, as the administration failed to adhere to the necessary legal rules during management to ensure respect for the principle of equality.

2.3- third Subtitle: The Principle of Adaptability of Public Facilities

Regarding the principle of adaptability, the administration responsible for managing and organizing the public facility has the authority to modify and develop it in accordance with the changing circumstances and developments in society, whether in terms of its management, organization, or even the nature of its activities. Beneficiaries do not have the right to object to such changes as long as they aim to improve the service and achieve the public interest.

If we accept the criterion of public authority and adaptability whenever it concerns the public interest and meeting citizens' needs, this change in the context of electronic administration will inevitably affect the electronic administrative aspect. This includes changes to the rules and procedures governing the organization and management of public facilities through the amendment or repeal of laws and regulations. Such changes will impact the general framework of the facility in relation to beneficiaries or stakeholders, thereby raising the state's no-fault liability for its laws if harm is caused to any party ¹⁵.

2.4- fourth Subtitle: Administrative Liability for the Disclosure or Destruction of Citizens' Personal and Confidential Information

The electronic facility is obligated to safeguard citizens' personal and confidential data and prevent any tampering or destruction thereof, as this may lead to administrative liability due to the resulting damages. The disclosure, tampering, or destruction of data constitutes the crime of unauthorized access to automated data processing systems.¹⁶ This crime may be committed by an employee of the electronic public facility or as a result of a breach of the administration's website.

Administrative liability in this context falls under the concept of custodianship, as the administration is responsible for safeguarding electronically processed data and information.¹⁷

2.5- fifth Subtitle: Administrative Liability for Damages Resulting from Certification Service Providers

The certification service provider is responsible for the accuracy of the information and data contained in the certificates it issues¹⁸.

Beneficiaries may rely on these certificates in various electronic transactions, which may have legal consequences and potentially cause harm to third parties - whether individuals or legal entities - if the certification service provider commits an error. Article 54 of Law 15-04 stipulates that the provider's liability is based on risk, without requiring the injured party to prove fault. However, the provider may refute this liability by proving that no negligence occurred during the certification process.

Conclusion:

In conclusion, it can be said that the current legal liability system, particularly concerning administrative liability, is not aligned with or responsive to the developments and changes in administration. While the legislature has enacted a set of legal provisions aimed at curbing cybercrime, creating an interaction between criminal liability and technological advancements, and the same applies to civil liability, such intervention has not been observed in administrative liability. It remains largely unaligned with the electronic administration in terms of its legal framework. A similar stance is observed in administrative judiciary practices regarding this issue.

Therefore, the following recommendations can be made:

- The urgent need to establish a legal framework for the administrative liability of the state for electronic damages.

- Specialized training for administrative judges to enable them to interact with developments in administration, understand electronic risks and errors, and apply appropriate legal liability provisions.

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