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Safeguards for Upholding the Doctrine of Independent Administrative Acts

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Abstract

The doctrine of independent administrative acts is among the principles recognized by the French Conseil d'État. It refers to administrative decisions issued autonomously within the framework of a composite legal process, which may be subject to annulment proceedings independently. This study highlights the importance of examining the rationale behind allowing such acts to be challenged through annulment as a means of reinforcing oversight over administrative conduct, particularly in the domain of public procurement. It also serves to safeguard the principle of legality and protect third-party rights within the contractual process by enabling challenges to any unlawful administrative decisions.

Keywords: *Independent administrative acts, principle of legality, annulment proceedings administrative contracts, protection of third parties.*

ملخص:

تعتبر نظرية القرارات الإدارية المنفصلة من النظريات التي أقرها مجلس الدولة الفرنسي وهي عبار عن قرارات إدارية تصدر بشكل منفرد في إطار عملية قانونية مركبة، تقبل الطعن بالإلغاء استقلالا، من هنا تبرز أهمية دراسة هذا الموضوع لفحص مبررات تكريس الطعن فيها بالإلغاء تعزيزا للرقابة على أعمال الإدارة، خاصة في مجال الصفقات العمومية، وضمان حماية مبدأ المشروعية من جهة وكذا حماية حقوق الغير في ظل العملية التعاقدية من خلال السماح له بالطعن في كل القرارات الغير مشروعة.

كلمات مفتاحية: القرارات الإدارية المنفصلة، مبدأ المشروعية، دعوى الإلغاء، العقود الإدارية، حماية الغير.

1. INTRODUCTION

Administrative activity is carried out through both decisions and contracts. While administrative decisions are subject to a legality review and may be annulled through administrative litigation, administrative contracts are generally governed by full judicial oversight. However, the conclusion and execution of such contracts depend on the issuance of necessary administrative decisions, which raise a judicial oversight issue when reviewed by the annulment judge. This is the basis of what is known as the doctrine of independent or severable administrative decisions.

Independent administrative decisions are issued within a composite legal process. They are autonomous legal acts that may be subject to annulment proceedings independently from the rest of the contractual framework. Over time, this doctrine has expanded to encompass various scenarios, including administrative contracts and public procurement procedures. Courts have permitted annulment actions against decisions such as authorization, disqualification, or approval of contracting, provided that the contested decision has an autonomous legal effect and can be dissociated from the other elements of the legal process.

The relevance of this subject lies in the ability of contracting parties or even third parties to bring annulment actions against administrative decisions that are originally part of a broader contractual process. The entrenchment of the doctrine of independent administrative decisions serves as a mechanism to enhance oversight over administrative conduct, particularly in the area of public procurement, where the risks of abuse of power are heightened. Moreover, it reinforces transparency in public contracting and constitutes a legal safeguard to uphold the principle of legality.

Problem Statement: What legal and judicial safeguards have been established to recognize and uphold the doctrine of independent administrative decisions?

Adopted Methodology: This study relies on a descriptive and analytical approach to examine key legal concepts and governing texts, complemented by a comparative method to benefit from selected judicial experiences in other legal systems. An inductive methodology is also employed to analyze specific judicial interpretations issued by the competent authorities in Algeria.

Research Structure:

The subject is divided into two main requirements.

- First topic : The concept of independent administrative decisions, focusing on their definition and historical development.
- Second topic : An exploration of the legal safeguards resulting from the recognition of independent administrative decisions, particularly as a means of protecting the principle of legality and guaranteeing third-party rights.

2. The Concept of Independent Administrative Decisions:

The doctrine of independent administrative decisions is a judicial theory recognized by the French administrative judiciary. It pertains to administrative acts issued as part of a composite legal process, yet which may be considered autonomous and severable from that process. This doctrine finds clear and prominent application in the context of public procurement procedures.

2.1. Definition of Independent Administrative Decisions :

Independent administrative decisions or severable administrative decisions are classified among compound administrative acts. The term “independent decisions” emphasizes the nature of the administrative act as a standalone legal instrument, distinct and autonomous in itself. In contrast, “severable decisions” highlight the possibility of dissociating a specific administrative act from the composite legal process in which it was issued, such as administrative contracts, electoral procedures, and similar legal operations.

2.1.1 Judicial Definition of Independent Administrative Decisions :

The origin of the doctrine of independent administrative decisions traces back to the French Conseil d'État, which ruled on November 25, 1947, that an independent decision is one that contributes to the formation and completion of a contract, yet remains separate in nature from the contract itself, making it subject to annulment proceedings on its own. Despite various judicial applications of the doctrine of severable administrative acts, the French Conseil d'État and administrative judiciary did not provide an explicit definition, leaving room for scholarly interpretation based on case law. Although it was the French judiciary that pioneered the theory of decisions separable from administrative contracts¹, it did not formulate a precise definition, relying instead on practical applications from which definitions have been inferred.

In contrast, Egypt's Administrative Judiciary Court has defined it as any expression made explicitly or implicitly by a public administration while performing its legally assigned duties within the administrative sphere, intended to produce a legal effect and possessing an executive character².

According to administrative jurisprudence, independent administrative decisions are legal acts within a composite or complex administrative process, yet they possess sufficient autonomy and separability to be subject to annulment as standalone acts. As such, they are governed by the same legal conditions applicable to unilateral administrative decisions, including admissibility criteria, procedural requirements, and the legal consequences of annulment rulings.

2.1.2 second section: Jurisprudential Definition of Independent Administrative Decisions :

Independent administrative decisions, in their general sense, are expressions of unilateral intent issued by the administration in exercise of its binding legal authority under applicable laws and regulations, aiming to produce specific legal effects. These may include creating new legal positions or altering existing ones through modification, amendment, or even complete annulment. While issued within the framework of a composite process, these decisions may stand alone as completed and autonomous legal acts capable of producing legal effects independently without affecting other components of the overall legal process or hindering its intended outcomes³.

Such acts are legal measures issued solely by the administration or by public authorities generally, within composite procedures that nonetheless permit their separation, allowing them to constitute standalone administrative acts capable of triggering legal consequences⁴. They may also be understood as administrative decisions contributing to the formation of administrative contracts, where their purpose is to facilitate the contracting process. These decisions, having independent legal effect, may be challenged separately through annulment proceedings⁵.

According to various jurisprudential perspectives, these decisions form part of a broader legal structure governed by either general or administrative jurisdiction. The judiciary, however, isolates these decisions from the composite legal process and permits their independent review through annulment actions⁶.

From these definitions, it becomes clear that independent administrative decisions are standard administrative acts issued unilaterally by the administration with the intention of producing legal outcomes. Yet, their issuance is tied to the development of a more complex legal procedure, such as contracts, where they serve a foundational role in executing and managing such agreements. As a result, they may be challenged before an administrative judge independently from the legal process to which they are linked.

2.2 Origins of Independent Administrative Decisions :

The doctrine of independent or severable administrative decisions is rooted in judicial precedent. It was first articulated by the French Conseil d'État in the early twentieth century, when the court extended its oversight to certain composite legal acts undertaken by the administration, without waiting for the entire legal process to be completed before permitting challenges. This judicial approach aimed to avoid the adverse consequences of delaying justice, such as obstructing rights and freedoms, postponing rulings on pivotal decisions, and breaching both legal standards and principles of rationality⁷.

2.2.1 The Rejectionist Approach to the Doctrine of Independent Administrative Decisions:

Initially, the theory of the “indivisible whole” emerged, denying the possibility of isolating any part of a composite administrative process from its other components. These processes were regarded as unified and inseparable entities, thereby precluding the possibility of challenging any segment of such administrative operations on an independent basis.

However, this theory faced significant criticism from both legal scholars and the judiciary. It was argued that it imposed excessive restrictions on the protection of rights and legal standings of individuals adversely affected by administrative decisions. Moreover, it often enabled the administration to evade accountability for unlawful actions.

2.2.2 second section: The Supportive Approach to the Doctrine of Independent Administrative Decisions:

One of the central justifications for the recognition and consolidation of independent administrative decisions in French administrative law lies in granting third parties the right to challenge such decisions. Commissioner Jean Romieu notably opposed the integration theory, which viewed the administrative contract as an indivisible legal entity. Under this framework, administrative acts contributing to the formation of the contract lost their autonomy and became inseparable from the contract upon its signature. This prevented the annulment judge or the *ultra vires* judge from reviewing the legality of those acts, assigning exclusive jurisdiction over administrative contracts to the full-jurisdiction judge⁸.

This position rendered preliminary administrative acts immune from third-party legal challenge and restricted the right of annulment solely to contracting parties. In response, Romieu argued that the theory imposed undue limitations on citizens’ rights and shielded unlawful administrative conduct. He proposed the theory of independent acts as an alternative, under which administrative measures are treated as separate from the contract; allowing third-party challenges even after the contract is signed, provided these acts carry no effect on the contract itself⁹.

In his conclusions for the Martin case, Jean Romieu noted that annulment in such cases may yield theoretical results: the administration might rectify the legal situation through subsequent action, and the contract may remain valid if neither party petitions for its termination. He stressed that this outcome should neither surprise nor discourage, as the annulment judge’s role is to determine whether the challenged act must be annulled, regardless of its downstream effects.

Should the administration correct its legal position, this would reflect deep respect for the court’s judgment. And if both parties uphold the contract despite annulment, the judgment still affirms the rule of law. It preserves access to justice for any citizen exercising a legal right to monitor administrative conduct and serves as a deterrent against future unlawful actions¹⁰.

3. Legal Safeguards for Upholding the Doctrine of Independent Administrative Decisions :

The institutionalization and recognition of the doctrine of independent administrative decisions constitute one of the most important legal guarantees for upholding the rule of law throughout contractual processes. This doctrine affirms the proper application of the law and ensures its enforcement not only by public authorities but also through third-party intervention to protect individual rights granted under legal frameworks. Through annulment proceedings against administrative decisions that infringe upon those rights, the doctrine reinforces the protection afforded by law.

3.1 Upholding the Principle of Legality through Independent Administrative Decisions :

The principle of legality stands as one of the main justifications for the consolidation and recognition of the doctrine of independent administrative decisions. Legality refers to the supremacy of law that administrative actions must conform to the law. The term “law” here is understood in its broad sense, not its narrow form: it encompasses all prevailing legal norms in the state, whether legislative or regulatory. This broader conception includes interpretative sources and subsidiary legal principles. In its narrower form, it is limited to statutory provisions enacted by the legislative authority.

3.1.1 Definition of the Principle of Legality :

While legal scholarship generally agrees that the principle of legality requires administrative actions to conform to the law, it diverges on how such conformity should be understood. One school of thought holds that legality entails administrative acts being the direct application of a legal norm, thereby expanding the reach of legality and narrowing administrative discretion¹¹.

A second view posits that legality requires administrative actions to be founded on an explicit legal basis, with any acts lacking such grounding subject to annulment. A third perspective argues that legality is satisfied so long as administrative actions do not violate the law, thus broadening the scope of administrative discretion.

A comprehensive and balanced definition therefore combines the second and third views: administrative actions must be based on legal texts when available, but in the absence of a specific legal provision, the administration may act as long as it does not contravene the law. This margin of action is referred to as discretionary authority.

To safeguard this principle, Algerian legislation provides for judicial review of independent administrative decisions through annulment proceedings; a key legal remedy available to individuals contesting the legality of such decisions. These proceedings are predicated on the existence of a final administrative act that is independent from the contract,

causes direct harm to the claimant, and suffers from one or more defects affecting its legality, such as procedural irregularity, lack of competence, abuse of power, or violation of law. Under the Code of Civil and Administrative Procedure, administrative courts are competent to adjudicate these claims and may annul the challenged act if illegality is established.

Judicial review of independent administrative decisions thus serves as a vital mechanism for balancing contractual relationships in public procurement. It curbs administrative overreach, protects economic operators and contractors, and reinforces the supremacy of the law vis-à-vis public authority.

Consequently, independent administrative decisions represent a defining feature of public contracts; granting the administration specialized legal tools to exercise its discretionary powers, while judicial oversight provides a counterweight rooted in legality and fairness, ensuring equilibrium between public interest and the rights of contracting parties.

3.1.2 Independent Administrative Decisions Related to Regulatory Provisions:

Administrative contracts may include regulatory clauses that create objective legal positions characterized by generality and abstraction, much like statutory norms. When the administration violates any such regulatory clause, the resulting act may constitute an unlawful measure subject to annulment before the legality judge.

This view is endorsed by Algerian legislation under Article 946 of the Code of Civil and Administrative Procedure, paragraphs 1, 2, and 3, which provide that administrative courts may be seized by petition in cases of breach of publication or competition requirements governing the conclusion of administrative contracts and public procurement operations. Such petitions may be submitted by any party with a vested interest in the contract or who may be harmed by the breach, as well as by the state representative at the provincial level if the contract is concluded or about to be concluded by a local authority or public institution.

According to this provision, petitions may be submitted prior to contract formation, and the legislator has applied this mechanism across all types of administrative contracts.

Legal doctrine generally holds that annulment cannot be sought against decisions issued during the contract's execution phase; instead, such disputes must be brought before the contract judge. Nevertheless, there are important exceptions to this rule namely, annulment actions brought against decisions made by the administration in its capacity as a public authority empowered by law and regulation to undertake certain measures, rather than as a contracting party. This applies, for instance, to challenges brought by employees under administrative contracts, whose relationship with the administration is dual in nature governed by both contractual and regulatory provisions.

The law affirms that violation of statutes or regulations is one of the defects that may render an administrative decision unlawful. As such, contractual parties may seek annulment against flawed administrative acts before the legality judge. However, challenges may not be

brought against contractual terms or obligations arising from the contract itself. Still, annulment remains permissible with respect to regulatory clauses; particularly those governing the operation of public services and their relationship with service beneficiaries.

Accordingly, when the administration issues decisions based on contractual provisions, challenges fall under the jurisdiction of the contract judge. But when decisions stem from the administration's authority under regulatory texts, annulment actions may be brought before the legality judge¹².

3.2 Upholding the Rights of Third Parties through Independent Administrative Decisions

As established, the possibility of challenging administrative decisions that breach laws or possess a regulatory character has led to the recognition of third-party standing. These decisions issued by the administration in its capacity as a public authority and grounded in prevailing legal and regulatory norms are considered external to the contract itself. Accordingly, even though third parties are not party to the contractual relationship, they may contest such decisions.

3.2.1 Third-Party Standing in Annulment Actions against Independent Administrative Decisions:

The term "third party" here refers to individuals or entities that are neither contracting parties nor general or specific successors of either party. If such a third party suffers harm from a decision issued by the contracting administration, they may initiate an annulment action to challenge its legality¹³.

The requirement that a claimant possess third-party status arises from administrative jurisprudence's refusal to separate decisions issued during contract execution from the contract itself. In such cases, the claimant is a party to the contractual relationship and must pursue a full-jurisdiction action in accordance with the principle of privity of contract effects¹⁴.

Under Decree No. 15/247 on public procurement¹⁵, the Algerian legislator has defined various third-party categories such as "bidder," "candidate," "economic operator," or "competitor." For example, the status of "bidder" is necessary for accepting an annulment action against a decision rejecting a bid. Likewise, the status of "candidate" is required to challenge decisions in open or restricted tenders or competitions¹⁶ only those who participated in the initial selection phase are eligible to contest the provisional awarding of a contract¹⁷.

The French Conseil d'État has allowed annulment actions by third parties not party to the contract against certain separable decisions issued during contract execution, particularly those taken by the administration in its capacity as a public authority under laws and regulations, rather than as a contracting party. Being a legal stranger to the administrative contract, such third parties lack standing to challenge decisions that simply embody the

contract. Thus, the Conseil developed the theory of independent administrative decisions to protect the rights and legal interests of affected third parties, enabling them to bring annulment claims before the administrative judge.

This is particularly evident in public service concession contracts, where legal relationships arise not only between users and the concessionaire, but also between users and the contracting administration. Since users have a legitimate interest in the uninterrupted and consistent delivery of public services under the applicable legal and contractual frameworks, the law grants them the right to bring annulment actions against administrative decisions issued during contract execution, independently of the contract itself.

In addition, annulment proceedings are admissible when brought by beneficiaries regarding decisions tied to public service concession contracts, as well as by employees of the concessionaire. These employees are governed by employment contracts subject to labor legislation, placing disputes under the jurisdiction of the ordinary courts. However, given that the administration defines the concession document, which contains provisions related to workforce entitlements and working conditions, many of which are regulatory in nature, the French administrative courts have allowed concessionaire employees to initiate annulment actions against decisions by the administration when those decisions violate the regulatory clauses of the concession agreement¹⁸.

From the above, it becomes clear that decisions issued by contracting authorities during the formation and execution of a public contract may retain their autonomy despite being tied to the overall transactional process. These are known as severable decisions, which may be subject to annulment before competent judicial bodies. Such decisions function as legal instruments for safeguarding public funds in government transactions and may be reviewed by administrative courts when deemed unlawful. Grounds for annulment include lack of jurisdiction, procedural defects, absence of legitimate cause, abuse of authority, and violation of legal norms all of which justify cancellation before the procedural chain is completed.

3.2.2 Extension of Third-Party Standing to Contracting Parties in Challenges Against Independent Administrative Decisions:

The general rule is that an annulment action against a decision separable from a public contract is admissible only if filed by a non-contracting party harmed by the contested decision. It is not accepted from the contracting party themselves, as they have the right to resort to the contract judge through full-jurisdiction proceedings. However, as an exception, administrative courts have developed specific cases in which the latter may file an annulment action. Therefore, we will first address the general rule regarding standing and interest in annulment actions against decisions separable from the contract, then proceed to the exceptions.

Departing from the general rule requiring the claimant to have "third-party" status when challenging an administrative decision separable from the contract, administrative jurisprudence has allowed the contracting party to bring an annulment claim if the decision

in question is based on applicable laws and regulations, rather than on the terms of the contract. In such cases, the decision issued by the contracting authority is not directed at the contractor as a party to the contract, but rather as an ordinary individual engaged with the administration under the laws and regulations governing the contractual relationship. Among the types of separable decisions that may be challenged by the contractor through annulment proceedings, despite being issued by the contracting authority, are:

- A decision by the contracting authority to remove the contractor's name from the list of approved suppliers, typically issued after the administrative contract has ended.
- A decision taken by the contracting authority in exercise of administrative police powers in the interest of public order, public health, or neighborhood tranquility, which affects the contractor, such as requiring construction works in a residential area to stop during late-night hours¹⁹.
- Decisions issued by supervisory authorities, such as approvals or certifications of measures taken by the contracting authority to execute or terminate the contract.

Algerian legislation has affirmed that final administrative decisions issued by public authorities are subject to annulment actions, provided that the decision reflects a binding expression of will by a public authority under laws and regulations with the intent of establishing a legal status in service of the public interest. In such cases, annulment is permissible. However, where administrative decisions are grounded in the terms of the contract itself, such as those concerning contract modification, financial rebalancing, price adjustment, or termination, disputes fall under the jurisdiction of the contract judge.

4- Conclusion :

The doctrine of independent administrative decisions, which emerges from complex administrative procedures, has been recognized by the French administrative judiciary and enshrined in Algerian legislation through the relevant legal provisions.

The core purpose behind consolidating this doctrine lies in upholding the principle of legality and ensuring that administrative conduct remains aligned with the law. This is achieved through regulatory texts embedded in the contracting process, making the doctrine a robust legal instrument for maintaining the rule of law in administrative practice.

Furthermore, recognition of the doctrine grants third parties outside the contract the right to challenge administrative decisions related to the contract that infringe upon their rights serving as a safeguard for the continuity and consistency of public service delivery, which is a constitutionally protected principle. Any violation of this principle constitutes grounds for annulment proceedings by non-contracting parties. Even the contracting party may, in certain circumstances, be considered a third party when the contested decision infringes upon legal or regulatory principles.

- ¹ Saif Saleh Al-Harbi, *The Annulment of Severable Administrative Decisions in Administrative Contracts: A Comparative Study*, Master's thesis submitted to the United Arab Emirates University, United Arab Emirates, unpublished, p. 13.
- ² Sahar Jabbar Yakoub, *The Independent Administrative Decision and Its Impact on Third Parties*, *Al-Ghari Journal for Economic and Administrative Sciences*, University of Kufa, Iraq, p. 184.
- ³ Jamal Abbas Ahmed Othman, *The General Theory and Its Application in the Field of Contract Termination in Jurisprudence and the Jurisprudence of the State Council*, Modern Arab Office, Egypt, 2007, p. 168 ff.
- ⁴ Habiba Atik, *Independent Administrative Decisions: Between Theory and Practice*, *Ma'ālim Journal for Legal and Political Studies*, University Center of Tindouf, Issue No. 3, March 2018, p. 251.
- ⁵ Boubaker Boussam, *Independent Administrative Decisions and the Oversight of the Administrative Judge*, *Journal of Law and Human Sciences*, Ziane Achour University of Djelfa, Issue No. 01, Vol. 16, 2023, p. 1518.
- ⁶ Georgi Chafik Sari, *Severable Decisions in Administrative Law: A Comparative Study*, Dar Al-Nahda Al-Arabia, 2002, pp. 43–44.
- ⁷ *Ibid.*, p. 47.
- ⁸ Ibrahim Mohamed Abdel-La, *Third-Party Challenges to the Administrative Contract Itself in the Context of Annulment and Full Jurisdiction Proceedings*, *Legal Journal*, Faculty of Law, Cairo University, Vol. 22, Issue 07, November 2024, p. 2494.
- ⁹ *Ibid.*, p. 2494.
- ¹⁰ Iman Ahmad Jarwan Al-Haysa, *Scope of Jurisdiction of the Annulment Judge over Administrative Decisions Severable from the Contract*, *Journal of Al-Zaytoonah University of Jordan for Legal Studies*, Vol. 03, Issue 1, 2022, p. 150.
- ¹¹ Tharwat Badawi, *The Legal State*, Vol. III, Dar Al-Nahda Al-Arabia, Egypt, 1959, p. 55.
- ¹² Mohamed Samir Mohamed Gomaa, *The Admissibility of Annulment Appeals against Severable Decisions in the French and Egyptian Systems*, *Journal of Legal and Economic Research*, Issue No. 49, Mansoura University, Arab Republic of Egypt, 2011, p. 195.
- ¹³ Sahar Jabbar Yaqub, *The Independent Administrative Decision and Its Impact on Third Parties*, *op. cit.*, p. 188.
- ¹⁴ Ashraf Mohamed Khalil Hammad, *The Theory of Severable Administrative Decisions in the Context of Administrative Contracts: A Comparative Study*, Dar Al-Fikr Al-Jami'i, Alexandria, 2010, pp. 143–145.
- ¹⁵ Presidential Decree No. 15-247 of September 16, 2015, published in Official Gazette No. 50 of September 20, 2015, regulating public procurement and public service concessions.
- ¹⁶ In Article 40, the term "bidder" appears in the call for tenders, while in Article 45, the term "candidate" is used in the restricted call for tenders under the aforementioned Decree No. 15/247.
- ¹⁷ See Article 45 of the aforementioned Decree No. 15/247.
- ¹⁸ Suleiman Mohamed Al-Tamawi, *The General Principles of Administrative Contracts: A Comparative Study*, 5th ed., Dar Al-Fikr Al-Arabi, Cairo, 2008, p. 196.
- ¹⁹ Mohamed Samir Mohamed Gomaa, *The Admissibility of Annulment Appeals against Severable Decisions in the French and Egyptian Systems*, *Journal of Legal and Economic Research*, Issue No. 49, Mansoura University, Arab Republic of Egypt, 2011, p. 201.

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