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Execution of the Algorithmic Administrative Decision

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Abstract:

The topic of the execution of the algorithmic administrative decision is considered one of the most prominent contemporary issues imposed by the development of artificial intelligence and its entry into the work of public administration. With administrative institutions relying on algorithmic systems to make decisions that affect individuals' lives, questions have emerged regarding when and how such a decision becomes enforceable and produces its legal effects. For this reason, legal scholarship and the judiciary today seek to adapt traditional legal rules to this new type of decision in order to achieve a balance between technological development and the protection of rights and freedoms.

Keywords: *Algorithmic administrative decision; legality; transparency; judicial oversight; protection of rights and freedoms.*

Introduction:

In recent years, the world has witnessed a profound shift in the methods of public administration as a result of the development of artificial intelligence technologies. Algorithms have begun to be used in making administrative decisions in various fields such as employment, grants, taxation, and public services. This development has led to the emergence of what is known as the algorithmic administrative decision, which represents a new stage in the evolution of administrative work. However, this technological transformation has sparked wide debate about the extent to which these decisions comply with the legal principles governing administrative decisions, especially with regard to the scope of their execution and their legal effects.

Moreover, the absence of the human element in the issuance of the decision raises fundamental questions regarding the extent to which such decisions comply with the principles of transparency, legality, and accountability, especially when they are based on data or algorithms whose logic is difficult to understand even for the administrative authority itself. Consequently, the need to adapt traditional legal rules to accommodate the specific characteristics of the algorithmic decision

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has become imperative, in order to ensure a balance between technological innovation and the protection of individual rights and freedoms.

The issue of the enforceability of the algorithmic administrative decision is therefore of great importance, as it constitutes a new form of administrative decisions produced by electronic administration and algorithm-based digital systems. The objective is to determine how the electronic algorithmic administrative decision becomes enforceable and to clarify the extent to which it differs from the enforceability of the traditional administrative decision.

Accordingly, does the enforceability of the electronic algorithmic administrative decision differ from that of the traditional administrative decision in terms of its effects and the means by which knowledge of it is acquired?

To answer this problem, we relied on the descriptive and analytical methods, and the study was divided into two sections. In the first section, we addressed the effects of the execution of the algorithmic administrative decision, and in the second section, the means of notification of algorithmic administrative decisions.

Chapter I*: *Effects of the Execution of the Algorithmic Administrative Decision

The execution of the algorithmic administrative decision does not differ much from the execution of the traditional decision, as the purpose of both lies in the process of informing about the administrative decisions issued by administrative authorities on the occasion of performing their administrative activity.

1- Effects of Execution for the Administration:

The time limits for the effectiveness of the administrative decision against the administration differ depending on the type of decision, whether it is an individual administrative decision or a regulatory administrative decision.

1-1 The Administration Individual Algorithmic Decision:

French doctrine and jurisprudence have established the principle that the individual administrative decision does not take effect against individuals until after they have been informed of it, meaning its notification or informing them of its content in an official manner. Accordingly, the administration may not rely on an individual administrative decision that has not yet been published or notified.

The French Council of State recognized, as of 1952, the principle of the execution of the individual administrative decision from the moment of its issuance against the administration. Accordingly, the administrative authority may not object or claim that the decision is not published or notified. It is worth noting that the rules and principles applied to the traditional individual decision also apply to the individual algorithmic decision.

1-2 The Administration Algorithmic Regulatory Decision:

The regulatory decision is linked to the law in terms of the beginning of its enforcement(1), as Article 04 of the Civil Code stipulates that laws shall apply in the territory of the People's Democratic Republic of Algeria starting from the day of their publication in the Official Gazette(2). The similarity between the regulatory decision and the law stems from the fact that both address a general and abstract subject.

2- Effects of Execution for Individuals:

The execution of the algorithmic administrative decision against individuals is only achieved by notifying them of it. It should be noted that the notification is not paper-based, but digital, through sending a copy of the decision via an SMS message to the concerned person or through their personal email. As for the algorithmic regulatory decision, it is executed through its publication on the administration's official website, noting that almost no administration is without its own website, or through the official website of the Official Gazette, in order to ensure that the individuals concerned are certainly informed.

3- Effects of Execution in Terms of Time:

The purpose of any legal act is to regulate acts and events that occur after its issuance by the competent administrative authority, and therefore it does not apply to cases and acts prior to its issuance - this is the main rule, to which exceptions may apply.

3-1 The Rule of Non-Retroactivity of Administrative Decisions:

The meaning of the non-retroactivity of the administrative decision is that it may not be applied to events and legal acts that occurred before the date of its entry into force. In other words, it becomes productive of its legal effects from the date of its execution, without affecting the past or reassessing acts and events that took place before that date. The purpose of this is:

– Respect for acquired rights The general principle is that any individual who has benefited from a certain right or has obtained a

particular legal status resulting from an administrative decision may not have that status or right affected except by an explicit legal provision.

– Stability of transactions between individuals Achieving the public interest requires that individuals do not lose confidence and reassurance regarding their rights and legal positions that were obtained under certain legal circumstances.

– Respect for rules of jurisdiction The basis on which the rule of non-retroactivity is established is the necessity of preventing the issuer of the decision from infringing upon the jurisdiction of their predecessor[3].

3-2 Exceptions to the Rule of Non-Retroactivity of Administrative Decisions:

The following exceptions apply to the rule of non-retroactivity of administrative decisions:

3-2-1 Permitting retroactivity by legislative text:

This is considered one of the oldest and most frequently used cases in the administrative field. Under this exception, the legislator may allow the administration, based on a clear and explicit provision in the law, to issue administrative decisions with a certain retroactive effect. The legislator may grant this right to the administration in order to achieve the public interest.

3-2-2 Retroactivity of administrative decisions in execution of a judicial ruling:

If an administrative decision is annulled by a judicial ruling, that decision becomes null and void, and therefore matters must be restored to the situation that existed before the issuance of the annulled decision. This is done through the issuance of a new decision by the administration[4].

3-2-3 Retroactivity of administrative decisions due to their nature:

There are types of administrative decisions that have a special nature which imposes retroactive legal effects on them. The most important of these are: *interpretative administrative decisions.*

3-2-4 Administrative decisions that necessarily include a retroactive effect:

The most notable example is the withdrawal of an administrative decision by an administrative authority during self-review, or by a superior or supervisory authority. If the withdrawn administrative

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decision is proven to be unlawful, the decision containing the withdrawal will have a retroactive effect that removes all legal effects produced by the previous decision.

Chapter II*: *Means of Notification of Algorithmic Administrative Decisions

Notification of administrative decisions is considered one of the most important conditions upon which their legal effects depend, as these decisions cannot produce their effects unless the persons concerned are properly informed of them. This may occur through publication, notification, or certain knowledge of the decision. With the technological development the world has witnessed, the administration has begun to rely on algorithms and intelligent systems in issuing its decisions. If traditional means such as publication, notification, and certain knowledge were sufficient in the past, digitization has imposed on the legislator and the administration the adoption of new means that ensure the effectiveness of electronic notification while respecting the principles of legality, transparency, and the right to defense.

1- Electronic Publication:

Electronic publication is considered a natural development of the principle of paper-based publication, in response to the requirements of the digital age and the applications of e-government. Modern legislation, including Algerian legislation after the year 2022[(5)], recognized the legality of publication through official platforms whenever it is done in accordance with technical and legal standards ensuring the integrity of the published document. Therefore, informing about decisions through electronic publication can have a significant impact through the internet and other various means of communication, allowing individuals to receive and know the decisions easily and in a short time. This enables them to express their opinions and possibly file an annulment appeal against those decisions. Among the communication methods that the administration may use is its website, which enhances transparency and allows everyone to access those decisions and learn their details.

For a long period, the administration relied on traditional publication through the Official Gazette or printed bulletins, which are means characterized by slow dissemination of information, high printing costs, and limited accessibility for individuals in remote areas or those who do not possess physical copies. Consequently,

administrative practice has increasingly shifted toward electronic publication via official electronic portals, which has made it possible to display decisions immediately upon their issuance and thus confer upon them an immediate and instantaneous character. As a result, the public has become able to access such decisions at any time and from any location, thereby strengthening the principle of transparency and free access to information(6).

1-1 Definition of Electronic Publication:

Electronic publication can be defined as: *the process of making administrative decisions of a general nature available through official digital media such as government websites or national administrative portals with the aim of enabling the public to view them easily and quickly(7).*

From this definition, a set of advantages and characteristics can be derived:

– Reducing public expenses and saving public funds compared to paper-based publication, which consumes significant amounts in printing and distribution.

– Characterized by accuracy and efficiency, as it relies on electronic procedures that are carried out regularly and immediately and cannot be easily hacked.

– Very high speed in delivering information and the content of decisions to all concerned, regardless of their geographical location, whether inside or outside the country, since websites are not limited by time or space, allowing access to information at any time and from anywhere.

– It is also characterized by the permanent availability of laws and decisions on the internet, which allows individuals to consult and refer to them at any time(8).

The issue of enforcing the algorithmic administrative decision has gained increasing importance in light of the digital transformation of public administration, as the decision is issued automatically through digital algorithms and becomes enforceable immediately upon its electronic publication. While this accelerates the mechanism of enforceability, it also gives rise to significant legal and technical challenges. Among the most prominent of these challenges is the protection of the personal data of individuals covered by the decision, as digital processing requires ensuring the confidentiality of

information and preventing any unlawful use thereof. This is also closely linked to cybersecurity, since the algorithmic decision constitutes a potential target for digital attacks, such as manipulation of the decision, forgery, or disruption of the publication and notification mechanisms(9). Accordingly, the enforcement of the decision cannot be separated from the legal and regulatory framework governing digital privacy, electronic authentication, and the protection of personal data(10). Legal scholarship emphasizes the necessity of adopting integrated security measures to ensure that the algorithmic decision is legally enforceable and reliable, while respecting privacy and ensuring cybersecurity protection.

1-2 The Importance of Electronic Publication:

Algorithmic decisions are published in order to determine the deadlines for judicial appeal according to what is stipulated in Article 829 of the Code of Civil and Administrative Procedures(11), in case the decision is tainted by one of the defects of legality.

Electronic publication has introduced fundamental changes to all technical and procedures, in addition to its importance in expressing administrative will and publishing all actions that aim to enhance administrative activity. With the increase in the number of users of electronic portals and the expansion of services provided through electronic communication means, an important opportunity is provided to publish all regulations and decisions to the persons concerned through the electronic portal of the administration or the relevant ministry(12).

2- Electronic Notification:

This method has become legally recognized in several legal systems, as the legislator has equated paper-based notification with electronic notification, provided that the identity of the recipient and the integrity of the transmission are ensured.

2-1 Definition of Electronic Notification:

Electronic notification is the process of informing the person concerned of an individual administrative decision through official digital media, such as email, SMS text messages, or electronic accounts on administrative platforms(13).

It aims to ensure actual and rapid knowledge of the administrative decision by the person concerned, without resorting to traditional paper-based means. Electronic notification requires the existence of the

decision in the form of an electronic document transmitted between parties through a programmed process carried out by a computer based on specified commands. Thus, the difference between the two methods lies in the mechanism of preparation and issuance.

2-2 Methods of Electronic Notification:

The notification of an administrative decision by electronic receipt is considered one of the most precise and secure methods, because it provides a documented digital proof of the date and time of receiving the decision, which facilitates determining the legal deadlines for challenging the administrative decision. It refers to the method in which the administration relies on sending the administrative decision through a digital means (official email or an electronic platform), and the notification becomes legally effective as soon as the recipient confirms the receipt of the message electronically, whether by clicking the "receive" button, downloading the decision, or opening the sent email.

2-2-1 Notifying the Administrative Decision by Electronic Sending:

The administrative decision is announced by sending it directly to its recipient to inform them of the content of the decision issued against them. This may be done by sending a registered letter that reaches the recipient by mail or telegram, or by using companies specialized in delivering official documents, or through an employee of the administrative authority issuing the decision, who personally delivers the decision to the person concerned. One of the most formal methods of decision notification is through a judicial officer.

However, these methods have faced many criticisms, the most important of which is that postal workers may commit serious errors, such as delivering the decision to a janitor or domestic worker, and consequently, the notification would not be personal. Therefore, the administration may use any method to send its decisions as long as it ensures that the decision reaches the intended recipients. Accordingly, the administration may use email as an alternative to paper-based sending for announcing administrative decisions, where the email is sent from an official electronic address of the administration to a verified electronic address of the person concerned, accompanied by an acknowledgment of receipt confirming that the message was opened or the attached decision was downloaded[14].

The administration follows one of the following two methods to notify algorithmic administrative decisions:

– The message is sent directly from the original sender without an electronic intermediary, and in this case, the message is delivered directly to the recipient's device connected to the information network, where they can access the message as soon as they log into the information system.

– The message is sent through an electronic intermediary, i.e., a third party such as an email server or a message delivery service. In this case, the message is delivered to the recipient's device, and the third-party intermediary notifies the original sender of the date and time when the recipient viewed the decision, in order to begin calculating judicial appeal deadlines[15].

Among the advantages of notifying the decision via electronic sending are the speed of transmission, ease of tracking, and lower costs compared to paper-based notification. Among its disadvantages are the potential failure of the transmission, email hacking, and difficulty in verifying the identity of the recipient in some cases.

2-3 Notifying the Administrative Decision by Electronic Receipt:

Notification of an administrative decision through electronic receipt is considered one of the most accurate and secure methods, as it provides documented digital evidence of the date and time of receipt of the decision, which facilitates the determination of the legal time limits for challenging the administrative decision.

For this method to be valid, a set of conditions must be fulfilled:

– Accurate identification of the recipient: *the email or electronic account used must be verified in the name of the person concerned to ensure that notification is not made to someone else*[16].

– Use of an official and secure means: *the transmission must occur through an electronic system approved by the administration that allows the issuance of a technically certified and timestamped electronic acknowledgment of receipt.*

– Possibility of actual verification of receipt: *notification is deemed effective at the moment the recipient opens the message, clicks the download link, or confirms electronic receipt.*

– Keeping a digital record of the notification: *the system must retain a digital copy of the sending and receiving process to serve as legal*

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proof when necessary[17].

– Among the most important advantages of email is that it overcomes the difficulties of traditional receipt, which consist of the concerned person refusing to receive the decision and refusing to sign the receipt report. There is no room for such refusal, especially with the existence of automated notifications that the administrative authority receives as soon as the message reaches the concerned individual, and with the presence of indicators that confirm that the content of the message has been read through dedicated automated notifications.

Proving electronic notification in the context of an algorithmic administrative decision is considered one of the most complex aspects of the digital administration framework, as it constitutes the point at which the effects of the decision move from mere legal existence to actual enforceability vis-à-vis those concerned. Therefore, the core issue of electronic notification-whether in individual or regulatory decisions-lies in how to achieve a balance between the speed and efficiency provided by digital means and the requirements of legal certainty and evidentiary value, which are essential to ensuring the legality of the algorithmic decision and the protection of the rights of those addressed by it[18].

Conclusion:

Thus, we find that the enforceability of the algorithmic administrative decision represents a real challenge. The shift toward digital administration and the use of artificial intelligence in making administrative decisions has granted the administration unprecedented speed and efficiency, given the diversity of these applications and the continuous innovation within them. Consequently, public administration has moved from the traditional administrative approach, characterized by slow transactions, to the pattern of smart administration, which is distinguished by speed in accomplishment and execution.

Accordingly, through this study, we reached a set of results and recommendations, which we present as follows:

Results:

- Despite the similarity between the traditional administrative decision and the algorithmic administrative decision, the difference between them appears in the technical characteristics of the algorithmic decision compared to the traditional one.

- *In terms of enforceability, the algorithmic administrative decision is subject to the same general rules applicable to traditional administrative decisions; however, the time required for its issuance and execution is electronically accelerated.*

- *The algorithmic administrative decision produces the same legal effects, yet its digital nature requires additional safeguards related to algorithmic transparency and the right of the concerned party to know the grounds on which the decision was based.*

- *The means of becoming aware of the algorithmic administrative decision are no longer limited to publication or paper-based notification, but now also include electronic publication on official websites and electronic notification via email or digital platforms.*

- Recommendations:

- *Establish explicit legal recognition of the evidentiary value of electronic acknowledgments of receipt as conclusive proof of knowledge of the decision, while taking into account cases of technical malfunctions and cyber breaches.*

- *Generalize digital training for public employees and administrative judges to enable them to accurately handle electronic documents and digital evidence.*

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