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IMPLEMENTING ADMINISTRATIVE DECISIONS UNDER THE E- GOVERNMENT

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ABSTRACT

The administrative decision is one of the most important legal means through which the public administration expresses its individual will. It is one of the most important issues that the administrative law deals with. It is the legal action issued by the administrative authority and represented by the public authority with the intention of arranging legal effects on it, such as creating a right or imposing an obligation. It is a certain subject to the provisions of the general law. The administrative courts are competent to consider administrative disputes issued by an administrative body affiliated with the body practicing the executive function with regard to the enforcement of the administrative decision. The administrative decision is effective once it is issued. In the field of electronic government and its impact on the enforcement and implementation of administrative decisions , its role is clearly demonstrated by converting traditional administrative procedures into modern electronic procedures by using modern technology to implement administrative orders in whole or in part without the intervention of the administrative employee.

In Iraq, there is no objection to the administration's expression of its binding obligation to use modern technological means. The primary goal of using these means is to achieve the public interest and satisfy the public needs, especially since when the administrative decision is issued in the modern electronic way, it remains conservative to all its elements and pillars through its issuance in conformity with the provisions of the law. The public interest remains the basis and purpose of issuing these decisions, whether traditionally or electronically.

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INTRODUCTION

In order to improve the public service and develop it in light of the technical and scientific transformation in all fields and the implications of these technologies for the scope of developing the administrative work, there is a shift in the administrative work methods that results in the necessity of reviewing the related provisions and organizing them in a manner that is consistent with their emerging nature To prevent lack of its own legal regulation. Studying the phenomenon of electronic administration is a study in the field of public administration in terms of providing means of communication and using the electronic information network and adopting it at work or in changing work patterns. It is necessary to explain the importance of research in this matter and problems Facing the administration and individuals with work in general, and in enforcing and implementing the electronic administrative decision in particular. It is necessary to clarify the research methodology followed in the present study. It is also necessary to clarify the most important divisions of the present study by clarifying the structure used in it.

First :The problem of study

It is necessary to show the role of the electronic administrative decision in developing the administrative work in an organized legal way not only by developing this work by following modern methods and keeping pace with the technological development that has become widespread in the majority of the countries of the world, but also by trying to find answers for the following questions:

1. What is the extent of the application of the electronic system in Iraq in administrative transactions and government institutions in general, and in the enforcement and implementation of administrative decisions in particular?
2. Does the application of the electronic management system in government institutions contribute to reducing the phenomenon of administrative corruption?

Second : The significance of study

The most important characteristic of the administrative law is that it is rapidly developing and is not codified. In turn, this contributes to acquiring legal flexibility that helps absorb the changes and face the requirements of modern administration without constituting an obstacle in the administrative development. The significance of the present study is due to raising the capacity of public facilities in the state to Exchanging information and providing services quickly, accurately, and at the lowest costs with ensuring the confidentiality of the security of the exchanged information and moving from traditional paper transactions that take a lot of time, effort, and expenses to the electronic stage that is simple and less expensive.

Third: The aims of study

The current study aims at:

3. Highlighting the importance of electronic administration in developing administrative work through electronic implementation of administrative decisions.
4. Studying the legal texts related to the implementation of electronic administrative decisions and working to develop appropriate solutions to the problems facing them, especially as it is a recent experience in Iraq.
5. Explaining the role of electronic administration in reducing the phenomenon of administrative corruption and eliminating the administrative bureaucracy.

Fourth: The Methodology of study

In order to reach the desired results from the present study, the two researchers have adopted the inductive analytical approach through research in the legal sources for the work of public administrations as well as the analysis of legal texts related to the electronic administration system and its application in some countries.

Fifth: The plan of study

Before discussing how to implement administrative decisions under e-government, it must be clear what is meant by e-government and administrative decisions and the impact of these governments on the pillars of the administrative decision. Hence, the implications of the application of the electronic administration system for the implementation of electronic administrative decisions should be presented. So, the present study is divided into three sections. Section one deals with the concept of electronic government and administrative decision. It is divided into two subsections. The first subsection deals with the definition of electronic government and its characteristics. The second subsection is devoted to discussing the definition of the administrative decision and its most important characteristics. Section two deals with The implications of the elements of the administrative decision in light of the application of the e-government system. It is divided into two subsections. The first subsection is devoted to discussing the impact of the electronic government on the formal pillars in administrative decisions (Gil-Leon, 2020; Gomez Soleret al., 2020; Dr. Kithatu-Kiwekete & Dr. Phillips, 2020; Dr Aj De Bruyn, 2020; Isabirye & Orlando, 2020; Kimanzi, 2020). The second subsection deals with the impact of the electronic government on the substantive elements in administrative decisions. Section three discusses the effect of enforcing and implementing administrative decisions under the e-government. It is divided into two subsections. The first subsection is devoted to discussing the effect of electronic government on the enforcement of the administrative decision. The second subsection addresses the effect of the electronic government on the implementation of the administrative decision. The present study ends with a set of results resulting from the implementation of the e-

government system in force and the implementation of administrative decisions as well as a set of recommendations that the Iraqi legislator is hoped to take into account for the purpose of developing the administrative activity.

SECTION ONE: THE CONCEPT OF E-GOVERNMENT AND ADMINISTRATIVE DECISION

E-government is a new trend in contemporary administration through the use of information technology in the completion of all its work, equivalence and administrative functions. To define e-government and administrative decision, this section is divided into two subsections. The first subsection addresses the definition of e-government and its characteristics. The second subsection deals with the definition of the administrative decision and its characteristics.

First: Defining e-government and its characteristics

This subsection is divided into two points. In the first, the definition of e-government is addressed. The second shows the characteristics that distinguish this government.

Definition of electronic government

E-government is the provision of local government departments to provide services via electronic tools and means. These electronic means contain telephone or Internet communication lines, regardless of their use, whether a personal computer, a digital visual device, or any other tool (Al-Hosh: 452).

Some scholars define e-government as the use of the latest new and advanced electronic technical tools and methods for managing public administrations in the state)) to raise the efficiency and level of performance within these government departments to provide a public service for those dealing with these public departments in a decent, fast, and easy manner within the framework of transparency and clarity. So, it satisfies the applicant for the benefit or service from the administration with which the applicant deals (Al-Fotouh, 2001).

It is clear that e-government is one of the outcomes of the information revolution that has occurred in the world and has become a necessity that must be sought in all countries to keep pace with the development in information technology.

Characteristics of E-government

The e-government has a set of characteristics distinguishing it:

1. Gathering all information activities and services in one subject on the official website of the government on the Internet, which, in turn, facilitates the work of the government and guarantees speed and efficiency in work in a way that achieves the general interest of the government and individuals alike.

2. This system guarantees permanent contact with the citizens. Thus, it helps people achieve a permanent feeling of security towards their government. It provides them with all the required information and services.
3. Reducing dependence on paperwork in government transactions, which leads to an abundance of all elements and achieving better returns than government activities with commercial returns (Al-Fattouh, 2001).
4. The ability to provide all the required information and services for the citizens to break the geographical barriers between the citizens and the government. That is related to population and skill, individual knowledge and ability to pay.

It is clear that electronic government has advantages and characteristics that contribute to keeping pace with technological development in the work of public administration. According to this development, public utilities tend to benefit from technical development by using new technologies in managing their business.

Second: Definition of the administrative decision and its characteristics

The legislator has not specified a specific definition of the administrative decision for its distance from this matter, which has been left to jurisprudence and the judiciary. Therefore, this subsection is divided into two points. In the first, the definition of the administrative decision is addressed. The second is devoted to examining the characteristics and advantages of administrative decisions.

Definition of the administrative decision

The administrative decision is defined as a decision issued by a specialized employee to issue it in the form required by law to establish a legal position issued for certain reasons and targeted for a purpose that is consistent with the public interest (Al-Sanhouri, 1952: 7).

It is obvious that the focus in this definition has been on the pillars of the administrative decision; jurisdiction, form, location, reason, purpose, or goal. The administrative decision is also defined as a legal action issued by the individual and obligatory will of one of the administrative authorities in the state to effect changes in the existing legal conditions by establishing a new legal position or amending or canceling an existing legal position (Al-Badir, Al-Barzanji, and Al-Salami, 1993: 417). This definition has focused on the elements of the decision; legal action, issued by an administrative authority, and issued by individual will.

It is noticed that despite the various definitions established to define the meaning of the administrative decision, there is a basic rule that all administrative decisions must be aimed at achieving the public interest. On this basis, all decisions must target the public interest as an end.

Characteristics of the Administrative decision

It should be noticed that the administrative decision has a set of characteristics as follows:

1. The administrative decision is a legal act; The administration's disclosure of its binding will achieved by the legal action issued by the administration that is representative of the public authority with the intention of arranging certain legal effects such as creating a right or arranging an obligation.
2. The administrative decision is issued by an administrative authority; The source of the decision is considered. If the decision is issued by the administration, the decision is of an administrative nature and is subject to the provisions of the general law. The administrative courts are the courts competent to look into the disputes arising thereon (Basiouni, 1991: 454).
3. The issuance of the administrative decision is by the sole and binding will of the public administration; The legal administrative act is described in the administrative decision as one-sided. It is issued according to the will of the administration and imposed on others without consent (George, and Pierre Delvoye, 2001: 194). It is not like the material administrative act, whether administrative or non-administrative. This is what distinguishes it from other legal actions issued by two sides, such as administrative contracts.
4. The administrative decision is final; What distinguishes the administrative decision is that it is a final legal action. The final legal actions issued by the public administration are not considered final administrative decisions.
5. The administrative decision has legal effects; The administrative decision has legal effects, such as creating, amending, or canceling a legal status.

SECTION TWO: THE IMPACT OF E-GOVERNMENT ON THE PILLARS OF THE ADMINISTRATIVE DECISION

The ruling on the legitimacy of any administrative decision requires that its elements be analyzed and that these decisions may be issued easily and quickly depending on the application of the electronic government system that is based on automatic and self-movement and flow of information. So, this section into is divided two subsections. The first subsection is devoted to the effect of the electronic government on the formal pillars of the administrative decision. The second subsection is devoted to the effect of the electronic government on the substantive pillars of the administrative decision as follows:

First: The effect of the electronic government on the formal pillars of the administrative decision

In order for the administrative decision to be legally sound, it must have specific elements that are essential to its validity. These pillars are (Hassan, 1979: 151-154 and Mansour, 1980: 2- 4):

1. It is divided into formal pillars and local pillars. The formal pillars are as follows:

A. Specialization

The jurisdiction in the field of administrative decision is the authority to issue it. This defect appears in three forms:

1. Lack of temporal jurisdiction; Under the e-government, the defect of the temporal jurisdiction can be greatly reduced as it fades under the e-government system because it is easy to identify the expiry date or the beginning of the temporal specialization through the internet on which the e-government system works (Desouki, 2000: 12).
2. Lack of spatial competence; It can be said that the defect of lack of spatial competence does not exist under the e-government system that aims to achieve administrative transparency and change the traditional method of organizing public administration and getting rid of bureaucracy and routine because of its technological progress in the means of communication and full coordination between government agencies and their tools. There are differences between them and the performance of services and decision-making (Alban, 2000: 17).
3. Lack of substantive jurisdiction; Under the e-government system, the problem of substantive jurisdiction is subject to great consideration, especially for central administrative authorities that are important to all parts of the state, which do not reduce or devolve some of its powers to administrative decentralization authorities where the electronic government depends on the speed and automatic flow of information that must be available. At the central and decentralized administration regarding the delegation of needs (Al-Baz, 2009: 69).

B. Form and procedures

The implementation of the e-government system leads to the improvement of the state's actions necessary to issue some administrative decisions. So, the rules of form and rules of procedures will be addressed in the following two paragraphs:

1. The rules of form in the administrative decision.

In the electronic government, new policies have been put in place to develop an administrative decision-maker who has the desire to develop by attaching courses for computer science, the Internet, and how to use electronic messages in a correct manner when the administrative decision is issued in the form required by the legislator (Mutwally, 2003: 89).

2. Rules of procedures in the administrative decision.

The application of the e-government system to overt procedures that work to achieve them easily is electronic. It is in the official newspapers or local bulletins. The person concerned can know about it via the mobile phone to achieve the certainty of knowledge. It can also be published or announced through a site (Al-Baz: 72).

In light of the implementation of the e-government system, the counseling procedures can be taken through the internet to issue some decisions and take an opinion or consult it with a committee (committee or council) before issuing the decision, whether taking the opinion is optional or obligatory (Allawi: 182-183). Consultation meetings can be held between decision makers through video conferences and obtaining the consultative opinions and approvals required for the decision to be issued in order to ensure its survival (Al-Helou: 15).

Second: The effect of the electronic government on the substantive pillars of the administrative decision

The effect of the electronic government on these pillars will be addressed in three points:

1. Reason

Under the application of the e-government system, it is easy for the administration to review the application of the appointment papers presented by the individual applying for appointment within the competition for appointment to the public job by keeping them inside the electronic store. If the administration refuses to appoint him/her for one of the reasons, it will be easy for the judiciary As for his/her censorship of the physical presence electronically to reject the appointment electronically (Al-Baz: 76- 77).

2. Location

In light of the implementation of the e-government system, and in order to investigate the legal impact of the decision, e-government networks have been linked to an Internet network so that it can communicate with the departments and various parties inside and outside the country, which will facilitate them to obtain the information they wish to access without trouble or hardship.

3. Target

Under the e-government system, the matter will change as this system contributes to changing the view of the administrative judiciary to the reserve characteristic of the defect of deviation from the authority from the purpose of the administrative decision, which is the public interest. Public utility employees keep electronic files inside the computer or on the Internet before the issuance of the decision. On the occasion of its issuance, the judge uses a lot of assistance, especially if copies have been seized or submitted of the electronic file to the judge in revealing the points of deviation in the issuance of the administrative decision (Al-Baz, 2007: 271.).

SECTION THREE: THE EFFECT OF THE ELECTRONIC GOVERNMENT ON THE ENFORCEMENT AND IMPLEMENTATION OF THE ADMINISTRATIVE DECISION

The method for enforcing electronic administrative decisions differs from it in traditional decisions in terms of the process of its implementation. The electronic side overwhelms it in terms of offering and even in terms of evidence or denial. So, this section is divided into two subsections. The first subsection addresses the effect of the electronic government on the enforcement of the administrative decision. The second subsection addresses the effect of the electronic government on implementing the administrative decision.

First: The effect of the electronic government on the enforcement of the administrative decision

Before the implementation of the administrative decision, the decision must become effective so that it can be implemented. The methods in which the administrative decision is enforced differ according to whether the decision is individual or organizational. The enforcement in the electronic administration also differs as some adjustments have occurred. Hence, this subsection is divided into three points discussing each of these methods in detail.

1. Electronic publishing

The e-government role in enforcing the administrative decision is shown by publishing in electronic newspapers instead of the traditional publication in official newspapers in relation to the organizational administrative decision.

To face the progress that countries are witnessing in the field of the electronic means, and the administration's use of these methods in the conduct of public facilities, for their ease and speed, the idea of reporting on administration decisions has been taken by publishing on electronic means such as the Internet and other means (Al-Salman, and Al-Agazemah, 2013: 1027).

2. Electronic reporting

Electronic reporting means informing individuals of the decision through the administration authority directly by the various electronic means that the administration deems appropriate for the method of reporting. In light of this development witnessed by public administrations and the trend towards electronic administration, this inevitably entails a review of the traditional methods of reporting and leaving them, and then resorting to reporting E-mail via the e-mail of the concerned parties (Al-Salman, and Al-Ajazimah, 2013: 1028).

3. Knowledge of administrative decision electronically

Within the framework of the electronic administrative decision, the address is made using modern technology, which leads to a limitation of the theory of certainty in its traditional form because such means are far from diligence in terms of the fact that what is required to be notified has been known with certainty, neither hypothetical nor implicit. The basic principle is that the electronic administrative decision focuses on the arrival of the electronic message that includes the administrative decision required for the information of the person concerned, which is done via e-mail, which has a secret code that only the owner knows (Muhsin: 312).

Second: The effect of the electronic government on implementing the administrative decision

The administrative decision is one of the most important topics of the administrative law. It is characterized by flexibility and development. It requires the administration to keep abreast of modern developments on the work of public

administration, the most prominent of which is the e-government. It is necessary to indicate the authorities that implement the administrative decision. They will be addressed in two points. The first point is the administration as it is obligated to implement its decisions. The second point deals with the individuals regarding the decisions issued against them (Brichieri-colombi, 2020; Grajetzki, 2020; Chen et al., 2020; Dong et al., 2020; Gumus et al., 2020; Junior et al., 2020; Ali et al., 2020; Ali, 2020).

1. Executing the administrative decision by the administration.

Public facilities have tended to take advantage of the scientific and technical development in the field of electronics, software and communications, using new technologies to accomplish and manage their business, which leads to speed in achievement and savings in effort, time and expenses. The implementation of the administrative decision by the administration itself comes from being obliged to implement its decisions (Kithatu-Kiwekete & Phillips, 2020; Kotze et al., 2020; Pasara & Dunga, 2020; Pasara & Dunga, 2020; Ncube & Koloba, 2020; Nel, 2020). The transformation of administrative procedures into electronic procedures that perform the same processes on their own without reviewing the employees concerned so that these electronic devices take the place of the administration in the implementation of its order in a traditional way because the computer devices respond to the implementation of orders in whole or in part according to the request without the intervention of administrative staff but according to Programs and data previously entered for the computer (Al-Hammadi, 2019: 31- 31).

2. The implementation of the administrative decision by individuals.

The administration may not implement its decisions on its own, but the individuals whose decision was issued to implement it when the decision relates to them, such as the decision issued to grant a license to open a place or practice a certain profession. It is the individuals who implement the decision and the administration does not interfere with its implementation (Al-Tikriti, 2002: 18).

The question arises about the work of the computer, is its work considered within the work of the administration? Is the computer considered the one who performed the work alone? Is it the source and implementer of the administrative decision? Or, is it owned by the administration and the work done is considered like the work of the administration because it has been programmed for this authority and issued commands according to computer input from the data that appeared in it?

To answer this question, an example of this case must be mentioned. It is the ATM at the banks, which can define the procedures provided by the bank to provide a service to the citizen. The user enters the card number and secret code as an electronic signature on the amount. Then, The device handles that data by magnetic pulses. The order is issued to cash out the amount, but rather it is

determined and revealed with its own account, provided that the customer requests that (Al-Hammadi: 29).

The trusted electronic medium is defined as an electronic program or system for a computer that can act or respond to an act completely or partially independently without the supervision of any natural person at the time when it is disposed of or responding to it (Article (2) of Law No. (2) of 2002 regarding UAE e-commerce and transactions).

Legally, the agency responds to acting independently without the intervention of another person, but in fact it implemented an administrative order and applied the characteristics of the administrative decision.

THE RESULTS

1. When conducting its business, the public administration intends to keep pace with developments, the most prominent of which is the e-government system, through which the administration can provide the public with better needs and services, faster results and lower costs.
2. The administrative decision is not required to be issued in a specific form, which in turn contributes to the issuance of the administrative decision electronically, as there are no legal obstacles that prevent its issuance in this way.
3. The electronic government aims to improve the general level of services provided to individuals, and to reduce the administrative complications faced by individuals in light of the practice of traditional methods
4. With regard to the electronic role in enforcing administrative decisions, the implementation of electronic administrative decisions clarifies the role of the electronic government, which is clearly evident through the publication of administrative decisions electronically, i.e. in electronic newspapers (in relation to organizational decisions), or through the administration's direct notification of individuals to the administrative decision Through the electronic means appropriate for this purpose. The enforcement of the administrative decision may be through another means, the administrative decision may be informed electronically.
5. With regard to implementing administrative decisions electronically, the role of the electronic government is evident through its conversion of traditional procedures into electronic procedures, which saves effort, time and money for the administration.
6. The implementation of administrative decisions by individuals when they implement decisions related to them. The role of the electronic government is highlighted in that the electronic system of the computer responds to the person's behavior independently without being supervised by any other person.

THE RECOMMENDATIONS

The two researchers have reached a set of recommendations. It is hoped that the Iraqi legislator will consider them in order to improve public utilities. Among these recommendations are:

1. Sufficient staffs of employees and technicians must be prepared after they are rehabilitated, prepared and trained on these systems so that they can properly handle the electronic administration system. It is noticed that the human element is the rational engine that manages and applies these electronic devices.
2. Keeping pace with the technical development and acquiring the new equipment as this is extremely important to face the rapid progress made in the field of computer, internet, and information technology and its application in most countries, which is done through the legislator's enactment of legislation that obliges the administration to follow this method in managing its business.
3. Activating the positives and reduce and minimize the negatives when applying this method in administration by identifying and understanding the various components of the electronic system and identifying the requirements of each component and the extent of its impact directly or indirectly on other components in the same electronic organization.
4. Issuing formal legislation by the legislator granting administrative decisions issued by the e-government with the legal authority granted to administrative decisions issued by traditional governments. The judiciary must judge the validity of these decisions in the same way as decisions issued traditionally.

CONCLUSION

The electronic government is one of the secretions of the information revolution taking place in the whole world. Therefore, it has become a necessity that must be sought to implement in all countries, including Iraq in order to keep pace with development and to reach what it has reached, or to seek access to developed countries.

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