

Environmental Administrative Decisions: A Fundamental Legal Study

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Abstract

This scientific article aims to define the concepts relating to environmental administration, with particular focus on administrative decisions as one of the most important mechanisms for regulating environmental administrative action. This is achieved through a systematic examination of environmental administrative decisions, which play a significant role in the protection of the environment and in entrenching the principle of environmental safety as enshrined in the Algerian Constitution of 2020, by highlighting the available environmental administrative instruments. These instruments encompass a body of administrative, constitutional, and legal rules and procedures that regulate the relationship between humanity and the environment — including its elements of air, water, and soil — in order to guarantee environmental safety and ensure the continuity of life in a sound environment, objectives that are attainable only through the adoption of sound environmental administrative decisions that govern this domain.

Keywords: Decisions; Administration; Control; Humans; Air; Water; Soil; Environment; Administrative Decision; Legality; Competence.

Introduction

The preservation of the environment, as an instrument for coordinating environmental administrations in States parties to international environmental conventions and for determining the standards to be followed in these States with a view to promoting environmental administration in urban communities, entails that the administrative decision issued in the exercise of the function of administrative regulation must be legally justified, failing which it is deemed unlawful. Beyond this, the members of society are legally vested with the right to demand that the administration intervene whenever it is remiss in adopting a position or fails to discharge its regulatory function — since the administration's failure to fulfil its role exposes the freedoms of individuals to peril. The objectives of environmental administrative regulation make it necessary for there to exist boundaries and controls governing the exercise of the function of environmental administrative regulation in accordance with the law. This function is subject to wide-ranging judicial supervision that transcends the ordinary limits of review of regular decisions, given its gravity for the freedoms of individuals — a prospect that is very real in light of the means available to the environmental administration in carrying out its functions in the course of preserving the ecological order.¹

This scientific article likewise aims to determine the concepts relating to environmental administration — in particular those pertaining to administrative decisions as one of the important mechanisms for regulating environmental administrative action — through an elucidation of environmental administrative decisions and of the role they play in the protection of the environment and in entrenching the principle of environmental safety as proclaimed in the new Algerian Constitution of 2020, by foregrounding the environmental administrative instruments. These instruments encompass a body of administrative and constitutional rules and procedures governing the relationship between human beings and the environment, and between human beings and the constitutive elements of the environment — namely air, water, and soil — in order to ensure environmental safety and the continuity of life in a sound environment, which can only be attained by adhering to sound environmental administrative decisions that regulate this domain.

Environmental administrative decisions play a pivotal role in the protection of the environment, encompassing a body of rules and procedures organising the relationship between humanity and the environment with a view to guaranteeing environmental safety and the continuity of life on Earth. This necessitates addressing the following central research problem: *What is the nature of environmental administrative decisions? And what is their essential definition and character?*

In order to answer the foregoing research questions, this article adopts the descriptive methodology, which is most suited to its nature. The article is structured in two sections as follows:

Section One: The Nature of Environmental Administrative Decisions

Sub-section 1.1: The Concept of the Environmental Administrative Decision

Sub-section 1.2: The Characteristics of Environmental Administrative Decisions

Section Two: The Legality of the Environmental Administrative Decision

Sub-section 2.1: The Concept of the Principle of Legality of the Administrative Decision

Sub-section 2.2: The Elements of Legality of the Environmental Administrative Decision

Section One: The Nature of Environmental Administrative Decisions

The importance of the administrative decision has grown in tandem with the expansion of the activities carried out by administrative bodies. The administrative decision is considered the most important element of the administrative process; indeed, it constitutes the very core of the work of state officials. The administrative decision is also regarded as one of the most hazardous privileges that the administration exercises in its dealings with individuals.²

Administrative decisions are, as a general matter, more flexible and less stable than legal acts in the domain of private law. It is universally accepted in the scholarship of modern public law that administrative decisions are subject to rules entirely different from those of private law, and that such rules respond with flexibility to the requirements of the proper functioning of public services — given that the public service, to which most rules of modern administrative law are traced, is governed by three general principles: the continuity of its operation with regularity and consistency; its susceptibility to change and modification at any time; and the equality of beneficiaries before it.³

Sub-section 1.1: The Concept of the Environmental Administrative Decision

In practice, there is no single unified definition of the administrative decision. Multiple definitions have been advanced by legal scholarship and by jurisprudence. As regards legislation, it has been maintained that it is inappropriate for the legislature to venture into offering definitions, in order to avoid the deficiencies or errors that fixed legislative formulations may generate when confronted with the changing demands of practical reality. Accordingly, legislatures generally refrain from defining the administrative decision.⁴

1.1.1 Doctrinal Definitions of the Administrative Decision

The difficulty of defining the administrative decision has not prevented legal scholarship from generating numerous definitions across different legal systems. Beginning with French jurists — who are among the earliest contributors to this exercise — Professor Jèze defined the administrative decision as "every voluntary act that produces a change in existing legal situations." Professor Hauriou, in turn, defined it as "a declaration by the administration intended to produce a legal effect with respect to individuals, issued by an administrative authority in an executive form, that is, in a form capable of direct execution."⁵

A section of administrative law scholarship has defined the administrative decision as: "the exercise of the power of decision or determination definitively and unilaterally, exercised by the administration by virtue of its function of preserving the public interest and managing public services, or exercised by a private law entity pursuant to a statutory provision for the performance of a task relating to the public interest."⁶

Among the most significant definitions advanced by Algerian administrative law scholars is that of Professor Ammar Awabdi, which brings together most of the constituent elements of the administrative decision. Awabdi defines the administrative decision as: "every unilateral legal act issued by the will of one of the competent administrative bodies that produces legal effects by creating a new legal situation, or modifying or abolishing an existing legal situation." We favour this definition for its comprehensiveness in capturing all the characteristics and elements constitutive of the administrative decision.⁷

Dr. Mohammed Al-Saghir Ba'li defines the administrative decision as: "the unilateral legal act issued by a public facility (public administration), which is capable of producing a legal effect in fulfilment of the public interest." It is also defined as: "an expression of a unilateral will issued by an administrative authority on a legal basis and entailing specific legal effects."⁸

In order to arrive at a definition that encompasses all the elements of the administrative decision — constituting its substantive dimension — without neglecting its formal dimension, which concerns the authority competent to issue it (namely the administration itself), and by taking these two aspects together, the administrative decision may be defined as: "a legal act adopted by the administration by its unilateral will and producing a specific legal effect."⁹

1.1.2 Jurisprudential Definitions of the Administrative Decision

The French administrative courts have defined the administrative decision as: "the expression of the general will through its binding will by virtue of its public authority pursuant to laws and regulations, its purpose being to establish, modify, or abolish a specific legal situation whenever this is possible and permissible, with the aim of pursuing the public interest."¹⁰

The Supreme Administrative Court of Jordan has defined the administrative decision as: "the administration's expression of its binding will by virtue of its authority pursuant to laws and regulations, for the purpose of establishing, modifying, or abolishing a specific legal situation whenever this is legally possible and permissible, and the motive behind it is the pursuit of a public interest."¹¹

The Algerian administrative judiciary has also attempted to offer a definition of the administrative decision on the basis of relevant decisions. In one of its judgments, the Council of State defined the decision as: "...a unilateral regulatory act that may be repealed or amended by the authority that issued it." An examination of this definition reveals that it does not encompass the most important element — namely the creation of legal situations constituting the acquired rights of individuals — thereby making the Algerian administrative judiciary's characterisation, confined to repeal and amendment, a traditional and insufficient formulation.¹²

Sub-section 1.2: The Characteristics of Environmental Administrative Decisions

Drawing on the foregoing definitions, we find that the environmental administrative decision is distinguished by several characteristics, as follows:

1.2.1 First: The Administrative Decision as a Legal Act

The administrative decision constitutes the administration's expression of its binding will. This is effected through a legal act issued by the administration in its capacity as a representative of public authority, with the intention of bringing about specific legal effects.¹³

Furthermore, it is a final legal act; consequently, a non-final legal act issued by the administration does not qualify as an administrative decision.¹⁴

The fact that the decision is a legal act means that actions for annulment are not available against material acts of the administration, since material acts do not produce legal effects and are therefore not susceptible to annulment proceedings, regardless of the harmful consequences they may entail — including preparatory measures, publications, and service instructions.¹⁵

1.2.2 Second: The Administrative Decision as a Unilateral Act

The administrative decision is issued by the unilateral will of the administration. This is its distinguishing characteristic, for it is issued by one party alone — the administrative body. This distinguishes it from the administrative contract, which requires the concurrent expression of two wills: the will of the administration and the will of the contracting individual. The former may be challenged before the administrative courts in annulment and compensation proceedings.¹⁶

1.2.3 Third: The Administrative Decision as Issued by an Administrative Authority

The administrative decision is issued by an administrative authority by virtue of its status as a public authority endowed with public prerogatives, including the power to issue administrative decisions. Such authority constitutes a national administrative authority, whether centralised or decentralised. For a decision to qualify as a reviewable legal act, it must have affected the legal position of the applicant — for example, by causing harm; otherwise, the administrative act is not susceptible to annulment proceedings.¹⁷

1.2.4 Fourth: The Administrative Decision as Producing a Specific Legal Effect

The decision must produce a legal effect consisting in the creation, modification, or abolition of a specific legal situation, whether individual or regulatory. This legal effect is ordinarily expressed through the concept of the "final decision" (al-qarār al-nihāī). The final decision, in accordance with the established case law of the administrative courts, is a decision issued by the competent authority in a definitive manner without requiring ratification by a higher authority.¹⁸

Section Two: The Legality of the Environmental Administrative Decision

Administrative law scholarship and its jurisprudence agree that the presumption regarding the administrative decision is that it was issued by the administrative unit in a valid and lawful manner. This rule presupposes the existence of a general legal presumption to the effect that administrative decisions are correct and lawful when issued by any unit of the state's administrative apparatus.¹⁹

Sub-section 2.1: The Concept of the Principle of Legality of the Administrative Decision

We address the principle of legality of the administrative decision inasmuch as it constitutes the path and foundation upon which the discretionary power granted to the administration rests. We accordingly examine, first, the linguistic concept and, second, the technical concept of the principle of legality in the administrative decision.

2.1.1 First: The Linguistic Concept of the Principle of Legality

"Principle" (mabda'): the beginning of a thing and its constitutive matter; plural: mabādi'. The "principles" (mabādi') of a science, religion, ethics, constitution, or law denote its foundational rules upon which it rests.²⁰

The Arabic term "mashru'iyya" (legality) is derived from the triliteral root shara'a — to legislate, to enter upon, to promulgate. The related lexical field includes: al-sharī'a (law/sharia), denoting the place where water descends and, by extension, what God has ordained of religion — including prayer, fasting, pilgrimage, zakat, and all other religious obligations. The technical juridical derivation of "mashru'iyya" from this root underscores its normative character as conformity with a higher ordering principle.²¹

2.1.2 Second: The Technical Concept of the Principle of Legality

Public law scholars have diverged in their definitions of the principle of legality to a degree that extends beyond the content of the principle itself to the very designation it carries. Some have

employed the term "mashru'iyya" (legality/lawfulness), while others have preferred "shar'iyya" (legitimacy).²²

Some scholars have defined legality broadly, giving it a comprehensive meaning: "the rule of law" or the conformity of any legal act or conduct with the law, whether in the domain of public or private law. This means that all laws, administrative decisions, regulations, and decrees of whatever rank are subject to the requirement of legality; non-conforming acts are exposed to judicial review, annulment, compensation, or both.²³

Sub-section 2.2: The Elements of Legality of the Environmental Administrative Decision

The administrative decision, as a legal act issued by the unilateral will of the administration pursuant to the authority conferred upon it by law with the aim of producing a specific legal effect, rests — like any legal act — upon five elements. Two of these elements relate to the form of the administrative decision (the element of competence and the element of form and procedure) and three relate to its substance (the element of subject matter, the element of cause, and the element of purpose). The absence of any one of these elements renders the decision unlawful, as will be explained below.

2.2.A First: The Formal Elements of the Environmental Administrative Decision

Element 1 – Competence (Ikhtisās)

The concept of competence, in the view of Dr. Suleiman Al-Tamawi, is conditioned upon the interest of the administration itself so that officials may specialise in particular types of work, thereby ensuring the speed of completion of administrative tasks. Competence is defined as: "the legal authority or capacity enjoyed by the decision-maker in issuing a decision from a material, temporal, and spatial standpoint."²⁴

The element of competence in the administrative decision is the legal capacity established for an administrative body or persons affiliated with it to issue specified decisions in terms of their subject matter and the temporal and spatial scope of their execution.²⁵

Element 2 – Form and Procedure

The administrative decision must adopt a specific external form or appearance, irrespective of the characteristics of that form. In principle, the administration is not bound by prescribed characteristics for the form of the administrative decision; it suffices that the decision be issued in a form that clarifies the administration's intention to adopt it and in a manner comprehensible to the general public of its interlocutors.²⁶

A decision may be issued in writing or orally; the silence of the administration may itself constitute a decision. It may also be indicated by sign or symbol. A decision may be implicit — as when an official lodges a grievance and sixty (60) days elapse without a response of rejection or acceptance, giving rise to a legal presumption of an implicit decision of rejection. However, once the legislature

has expressly required that the final decision be cast in a specific formal mould, the administration is bound by that form, failing which its decisions are deemed unsound.²⁷

Procedures denote the practical steps followed by the administration in issuing a decision throughout all stages of its preparation and drafting, from the initial consideration of issuance until the decision enters into effect. Procedural requirements are in themselves a guarantee for the preservation of the public interest of society through the issuance of legally sound decisions.²⁸

2.2.B Second: The Substantive Elements of the Environmental Administrative Decision

Element 3 – Subject Matter (Mahall)

The administrative decision is a legal act issued by a competent authority that leads to the production of specific legal effects; these effects distinguish legal acts from the material acts of the administration and represent the subject matter of the administrative decision. The subject matter is the very substance of the decision — the change it produces in the existing legal order, whether by creating a new legal situation, modifying an existing one, or abolishing it.²⁹

The subject matter must be legally possible and permissible. Where the decision is vitiated in its content — because the legal effect is impermissible or contrary to law, whatever its source, whether constitutional, legislative, regulatory, customary, or constituted by the general principles of law — the decision is unlawful.³⁰

Element 4 – Cause (Sabab)

The element of cause refers to the factual or legal circumstances that precede the decision or motivate its issuance. It is also legally defined as the totality of factual and legal elements that authorise the administration to act and to adopt the administrative decision.³¹

For the element of cause to be valid, the cause must exist at the time of issuance and must be lawful — that is, compliant with the legal order. Furthermore, the cause must be determinate and genuine, free from generality, embellishment, and ostensibility. This requirement has significant importance in enabling the concerned party to understand the decision issued against them and to determine their position in relation to it.³²

Element 5 – Purpose (Ghāya)

The purpose or aim denotes the objective sought by the administration through the adoption of the administrative decision — the final result targeted by the official. The presumptive purpose of every administrative decision is the realisation of the public interest; deviation therefrom vitiates the decision in its purpose. The administrative decision is an instrument of the administration for the achievement of the public interest.³³

In the event that it is established that the issuer of the decision was not pursuing the public interest, the decision is vitiated by an abuse or misuse of power (*détournement de pouvoir*). The following are examples of such abuse:³⁴

- Favouritism of one person at the expense of another.
- Pursuit of personal benefit by the decision-maker.
- Religious or political retribution.

Conclusion

The autonomy enjoyed by the environmental administration is not absolute; it is circumscribed by the objective for which the environmental administrative decision was issued. On this basis, the administrative judiciary must necessarily supervise the activities of the administration so that the quality of legality may attach to what it issues and so that such decisions may acquire the force of binding authority (hujjiyya). Equally, the rights of individuals must be preserved against all possible transgressions on the part of the environmental administration.

This study has established that environmental administrative decisions constitute a specialised category of administrative decisions characterised by their binding unilateral nature, their issuance by competent administrative authorities, and their capacity to produce legal effects that alter the environmental legal order. Their legality depends on the cumulative fulfilment of five elements: the competence of the issuing authority, adherence to prescribed forms and procedures, a lawful subject matter, a genuine and existing cause, and a purpose directed at the public interest.

In light of the foregoing, this article advances the following recommendations: (i) the Algerian legislature should enact a specific normative framework for environmental administrative decisions that makes explicit their definitional elements and conditions of validity; (ii) the administrative judiciary should broaden the scope of its review of environmental administrative decisions in light of their direct impact on the constitutional right to a sound environment as proclaimed in the 2020 Constitution; and (iii) future scholarship should examine the mechanisms for individual participation in the adoption of environmental administrative decisions as a complement to judicial review.

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