

## The limits of public authority in issuing administrative decisions in Algeria

Dr. Taieb Frodjen <sup>1</sup>, Dr. Saad Louglaib <sup>2</sup>, and Dr. Ben Rahmoune Abdelhamid <sup>3</sup>

<sup>1</sup> Lecturer Class A, Ahmed Ouancharissi University of Tissemsilt (Algeria). [frodjen.taieb@univ-tissemsilt.dz](mailto:frodjen.taieb@univ-tissemsilt.dz)

<sup>2</sup> Lecturer Class A, Mohamed Boudiaf University of M'sila, Governance Horizons Laboratory for Sustainable Local Development (Algeria). [Saad.louglaib@univ-msila.dz](mailto:Saad.louglaib@univ-msila.dz)

<sup>3</sup> Temporary Professor, Mohamed Boudiaf University of M'sila (Algeria). [hbenrahmoune150@gmail.com](mailto:hbenrahmoune150@gmail.com)

**Abstract---**The issuance of administrative decisions by the public authority is an important manifestation of the exercise of its assigned functions, which are aimed at achieving public interests for the benefit of society. This responsibility is undertaken by the public authority in Algeria. However, the issuance of administrative decisions is subject to limits and regulations aimed at protecting the rights of individuals and the community, while also ensuring that the authority fulfils its duties within the framework of the law. These limits are founded on legal and judicial rules, which are provided by administrative and judicial oversight.

**Keywords---**public authority, administrative decisions, administrative oversight, judicial oversight.

### Introduction:

The modern state is founded on a system of authorities and institutions that implement public policies, uphold public order and advance the public interest. Public authority lies at the heart of administrative work, empowering administrative bodies to make administrative decisions — the primary legal means of carrying out administrative functions. However, while this authority is essential for administrative effectiveness, it can also lead to arbitrariness if it is not constrained by clear legal and procedural limits.

As in comparable systems, administrative decisions in Algeria are subject to a set of constitutional, legal and procedural principles that establish boundaries and provide guarantees to protect the rights of individuals and groups. The greatest challenge lies in striking a balance between administrative

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effectiveness and the rule of law, by granting public authorities the necessary powers to carry out their assigned tasks, while also ensuring that their actions are restricted to serve the public interest and protect the rights of individuals and groups from the misuse of those powers.

To understand the limits that regulate public authority when issuing administrative decisions in Algeria, we can pose the following question:

What are the limits of public authority in issuing administrative decisions in Algeria?

This study aims to analyse these limits in light of legal texts, the role of the judiciary and administrative practice. To achieve this and answer the posed question, this study will be divided into two parts:

1. The theoretical foundations of administrative decisions and the source of public authority.
2. Types of public authority.
3. Legal constraints on public authorities when issuing administrative decisions
4. Judicial oversight of the legality of administrative decisions
5. Practical challenges in regulating the actions of the public authority when issuing administrative decisions.

### **1. Theoretical Foundations of Administrative Decisions and the Source of Public Authority**

In order to discuss administrative decisions and the source of public authority, we will first define an administrative decision and then examine the source of public authority in issuing these decisions.

#### **1.1 Definition of an Administrative Decision:**

An administrative decision is a legal act issued by a competent administrative authority through its unilateral will. It produces a direct legal effect, as it is an individual, voluntary and binding act with an external impact<sup>1</sup>. Administrative decisions represent a means of administrative activity through which public authorities can perform their assigned tasks aimed at achieving the public good.

It is a unilateral legal action issued by a competent administrative authority that aims to create, modify or terminate a legal status<sup>2</sup>. Each administrative decision has essential components, which are:

#### **A. Element of Subject Matter:**

The subject matter of administrative decisions must comply with the law. This means it must respect both written legal rules derived from the constitution, ordinary laws and regulations, and unwritten rules represented by general principles of law.

#### **B. Element of Cause:**

The element of cause in administrative decisions is a distinctive feature of the judicial oversight process, alongside the element of purpose. Public authorities issue their decisions based on a cause. Typically, the cause of an administrative decision is the preceding factual or legal situation; these circumstances justify the decision's issuance.

#### **C. Element of Purpose (Objective):**

This element is crucial in judicial oversight of the internal legality of administrative decisions. It refers to the administration's use of its authority to achieve a legitimate purpose. A lack of clarity regarding this element results in a defect known as an abuse of power.

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<sup>1</sup>- Mohammed Al-Saghir Baali, *Administrative Law: Administrative Activity*, Dar Al-Uloom Publishing, Algeria, 2009, p. 64.

<sup>2</sup>- Abdallah Bouchnafa, *Administrative Law*, Dar Al-Khaldounia, Algeria, 2018, p. 75.

We differentiate between two types of administrative decision:

Regulatory decisions, which are general and abstract in nature, such as regulations and decrees, and individual decisions, which pertain to specific individuals, such as a decision to appoint someone to a position or a decision to expropriate for public benefit.

Individual decisions pertain to specific individuals, such as a decision to appoint someone to a position or a decision to expropriate for public benefit.

## **2. Sources of Public Authority:**

The administration derives its authority from the law, which defines its jurisdiction and its methods of intervention. Any authority not derived from a legal text is considered illegitimate. The Algerian Constitution of 2020, along with organic and regulatory laws, is the basis for the administration's power to issue administrative decisions. The Constitution includes general principles that organise the administration's work, as well as various regulatory laws, such as the Municipal Law, the Wilaya Law, the Public Procurement Law and Law No. 08-09<sup>3</sup>, which regulate civil and administrative procedures and how to challenge administrative decisions.

### **Second: Types of Authorities:**

There are two types of authority: discretionary and constrained, which are the means available to the administration when issuing administrative decisions.

#### **1. Discretionary Authority:**

The principle is to empower the administration with discretionary authority, which is either narrowed or expanded based on circumstances and factors defined by law. Constrained authority is the exception. The administration enjoys discretionary power in certain areas, such as hiring, promotions, or granting licences, allowing it to make decisions it deems appropriate based on the circumstances<sup>4</sup>.

Therefore, any administrative activity inherently contains both discretionary and constrained elements. Discretionary authority is often exercised to serve the public interest while enabling the administration to fulfil its functions.

#### **2. Constrained authority:**

Undoubtedly, constrained authority is the most effective legal model for protecting the rights and freedoms of individuals, as it precisely defines the powers of the administration, controls its will and limits its excesses. In many cases, the law requires the administration to make a specific decision when certain conditions are met, meaning public authority lacks freedom of discretion. Examples include granting a licence after meeting the stipulated conditions or imposing a specific penalty when a particular violation is established<sup>5</sup>.

One of the most prominent features of constrained authority is the element of competence, where discretionary authority is not permitted. The rules of competence are set by the legislative authority in order to distribute powers among various central, local and administrative bodies<sup>6</sup>.

An administrative body is either competent or incompetent. If it is competent, the law may grant it discretion in its administrative activities or limit its autonomy. The rules of public order determine the competencies that define the authority of various bodies to issue administrative decisions, whether through the constitution or laws and regulations<sup>7</sup>.

<sup>3</sup>- Law No. 08-09, dated February 25, 2008, concerning civil and administrative procedures, Official Gazette No. 21 of 2008, amended and supplemented.

<sup>4</sup>- Abdelghani Basyouni, Administrative Systems, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2000, p. 217.

<sup>5</sup>- Ahmed Abu Al-Fattouh, Administrative Law, Dar Al-Jamiah Al-Jadida, Egypt, 2015, p. 328.

<sup>6</sup>- Amar Boudeiaf, The Principle of Legality and the Role of Administrative Judiciary in Its Protection, Lectures on Administrative Law for Graduate Students, Arab Academy in Denmark, Public Law Department, p. 24.

<sup>7</sup>- Nacer Labad, Concise Administrative Law, 2nd edition, Dar Al-Mujaddid, Algeria, 2008, p. 259.

Consequently, constrained authority is necessary for the continuity and proper functioning of the administration. Individuals must impose restrictions on the administration's freedom as this is the best way to protect their rights and freedoms from administrative overreach, arbitrariness and abuse. Anyone with a legitimate interest has the right to challenge any deviation from the legal framework and seek a judicial review to rectify the situation and ensure compliance with the law.

### **Third: Legal constraints on public authorities when issuing administrative decisions**

Legal constraints are among the most important factors limiting the ability of public authorities in Algeria to issue administrative decisions. These decisions are subject to oversight of the administration's actions, whether through an administrative body or a judicial authority. These constraints include:

#### **1. The principle of legality:**

This principle is the cornerstone of administrative law, meaning that every administrative decision must comply with the law regarding competence, form, cause, subject matter and purpose<sup>8</sup>. The principle of legality generally signifies the supremacy of the rule of law, whereby its provisions and rules prevail over the will of both rulers and the ruled<sup>9</sup>. From this perspective, administrative authority is subject to the law in all its actions and decisions, across all aspects of its activities. This is referred to as administrative legality<sup>10</sup>.

The hierarchy of legal rules is governed by the principle of legality, with constitutional rules at the top, followed by treaties, laws issued by the legislative authority (including orders issued by the President of the Republic in cases specified in the constitution), the general principles of law recognised by the administrative judiciary, and finally subordinate legislation.

#### **2. Principle of Proportionality:**

This principle requires the means employed in an administrative decision to be proportionate to the intended objective. It prohibits public authorities from taking excessive measures that go beyond what is necessary<sup>11</sup>.

#### **3. Principle of non-abuse of power:**

Abuse of power occurs when the true aim of a decision differs from its apparent purpose, and is a form of illegality. This leads to the administrative decision being annulled by the administrative judiciary<sup>12</sup>.

#### **4. Necessity of respecting rights and freedoms:**

The administration may not infringe upon freedom of movement, expression, property or any other individual right, except within the limits of the law and according to regulated procedures under judicial oversight. This ensures the right to defence and appeal<sup>13</sup>.

### **Fourth: Oversight of Issuing Administrative Decisions**

The issuance of administrative decisions is subject to two types of oversight that can directly impact these decisions and even annul them. One type of oversight alerts public authorities to violations that accompany the issuance of administrative decisions. The bodies exercising this type of oversight do not have any binding authority over the administrative authorities.

<sup>8</sup>- Abdul Aziz Salman, *General Principles of Administrative Law*, Dar Al-Fikr Al-Arabi, Egypt, 2012, p. 144.

<sup>9</sup>- Mohammed Rifaat Abdel Wahab, *Administrative Judiciary*, Volume One, *The Principle of Legality and the Organization of Administrative Judiciary*, 1st ed., Halabi Legal Publications, Beirut, Lebanon, 2005, p. 12.

<sup>10</sup>- Abdelkader Aadou, *Administrative Disputes*, Dar Houma, Algeria, 2014, p. 14.

<sup>11</sup>- Nacer Lazzahri, *The Algerian Administrative System*, Dar Al-Matbuat Al-Jami'iya, Algeria, 2018, p. 210.

<sup>12</sup>- Fouad Attar, *Administrative Judiciary and Control over the Legality of Decisions*, Dar Al-Jamiah Al-Jadida, Egypt, 2008, p. 230.

<sup>13</sup>- Universal Declaration of Human Rights of 1949, Article 12, and the Algerian Constitution of 2020, Article 34.

Regarding judicial oversight, it is exercised by judicial bodies, while administrative oversight is carried out by administrative entities. Judicial oversight is the most effective and impactful in setting limits on public authority in issuing administrative decisions and binding them to legal standards. In contrast, oversight exercised by administrative entities is less effective in curbing the excesses committed by public authority when issuing administrative decisions.

### **1. Judicial oversight of the legality of administrative decisions**

The administrative judiciary plays a crucial role in this, as it is the legally authorised body with the power to annul administrative decisions. Notably, the Council of State in Algeria plays a significant role, alongside the powers granted to the administrative judge to oversee the administration's discretionary authority.

#### **A. The Role of the Algerian Council of State:**

The Council of State is responsible for monitoring the legality of administrative decisions by taking action to annul decisions based on abuse of power. It has the authority to examine the components of an administrative decision to ensure compliance with the law and public interest<sup>14</sup>.

The oversight exercised by the Council of State takes various forms, including:

##### **A-1. Judicial oversight of the reasons for the administrative decision.**

The administrative decision must be based on genuine factual reasons that enable the judiciary to exercise oversight of the material existence of the decision. Additionally, there must be legally valid reasons that enable the judiciary to oversee the legal basis of the facts.

##### **A-2. Administrative oversight of the subject matter in the administrative decision:**

When issuing an administrative decision, the administration must adhere to legal rules, given the close relationship between the reason for the decision and its subject matter. This means that the legislator's restriction of the administration's authority regarding the reason for the decision is reflected in its legal effect, i.e. the subject matter.

##### **A-3. Judicial oversight of the purpose of the administrative decision:**

Every administrative decision must aim to serve the public interest. While the law grants administrative authorities various privileges to accomplish this goal, achieving this purpose requires judicial oversight of the content of administrative decisions to prevent authorities from deviating from their primary aim of achieving the public interest.

#### **B. The authority of the administrative judge in examining the discretionary authority of the administration:**

While the administration has discretionary power when making certain administrative decisions, the administrative judge can intervene to ensure that the administration does not abuse its power, particularly when making decisions that affect individuals' fundamental rights<sup>15</sup>.

An example of administrative judges intervening in administrative decisions despite the administration's discretionary authority can be seen in expropriation cases for public benefit. For instance, the administrative court in Algiers annulled an expropriation decision due to a lack of legitimate reason and a failure to respect compensation procedures, which constituted a violation of the constitutional protection of private property<sup>16</sup>. Similarly, the Council of State annulled an administrative decision to

<sup>14</sup>- Organic Law No. 98-01, dated 30/05/1998, concerning the competencies of the Council of State, its organization and operation, Official Gazette No. 5 of 1998.

<sup>15</sup>- Council of State Decision, Fourth Chamber, File No. 17596, Session dated 17/04/2014.

<sup>16</sup>- Administrative Court Judgment in Algiers, File No. 2021/456 dated 12/06/2021.

suspend an employee for failing to follow the disciplinary procedures outlined in the Civil Service Law, on the basis that there was no legal justification for the suspension<sup>17</sup>.

## **2. Administrative Oversight or Internal Oversight:**

The law allows individuals who have been wronged by administrative decisions issued by public authorities to file internal complaints regarding administrative grievances with the issuing authority, whether such complaints are mandatory or discretionary.

## **3. Oversight by Independent Authorities:**

Independent authorities play a supervisory role, notifying and alerting public authorities when administrative decisions infringe upon or restrict the rights and freedoms of others. They do not have any binding authority over decision-making bodies. Rather, their role is limited to bringing violations affecting rights protected by law to the attention of public authorities.

The National Human Rights Council is an example of such oversight; it monitors human rights<sup>18</sup>. Since administrative decisions may impact these rights, the council informs public authorities of anything that could harm those rights and ensures the administration adheres to legal constraints and fundamental rights.

## **Fifth: Practical Challenges in Regulating the Actions of Public Authorities When Issuing Administrative Decisions:**

Several practical challenges arise when attempting to regulate the actions of public authorities when issuing administrative decisions. These challenges limit the effectiveness of the regulation and constrain public authorities within the boundaries that govern their actions. These challenges can be summarized as follows:

### **1. Weak internal administrative oversight mechanisms in certain sectors.**

- Delays in resolving administrative disputes encourage some administrations to continue violating the law.
- Insufficient legal training for some employees, which can lead to the issuance of unlawful decisions due to ignorance or negligence.

The absence of a culture of administrative accountability among certain local officials allows some to persist in violating the law when issuing administrative decisions.

## **Conclusion:**

The Algerian administration possesses the necessary powers to manage public facilities and achieve the public good. However, this authority is not absolute; it is constrained by strict legal rules and general principles that aim to balance the actions of the public authority with the rights of individuals. To prevent the administration from acting arbitrarily, it is crucial to implement oversight mechanisms, particularly effective judicial oversight, alongside providing legal training for employees and cultivating a culture of respect for the law within the administration. This ensures that the administration adheres to the legal limits governing its actions when issuing administrative decisions, with the aim of reconciling the objectives of public authority with the protection of individual rights.

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<sup>17</sup>- Council of State Decision, Fourth Chamber, File No. 31245 dated 18/03/2019.

<sup>18</sup>- The National Council for Human Rights, established under the constitutional amendment of 2016, is considered an independent administrative and financial body placed "under the President of the Republic, the guarantor of the Constitution," as stated in Article 198. As mentioned in Article 199 of the constitution, the council undertakes "the task of monitoring, early warning, and evaluation in the field of respect for human rights," and it "examines, without prejudice to the powers of the judiciary, all cases of human rights violations that it observes or is informed of, and takes all appropriate measures in this regard, presenting the results of its investigations to the relevant administrative authorities, and if necessary, to the competent judicial authorities."

Therefore, the limits established to regulate the actions of the public authority when issuing administrative decisions are of the utmost importance, as they strike a balance between public interest and individual rights. Finally, we can propose several recommendations:

**1. Enhance legal training for administrative employees:**

Public authorities should organise regular training sessions for employees responsible for making administrative decisions, to ensure they are fully aware of the legal constraints governing their work.

**2. Activate Internal Oversight Roles in Public Administrations:**

Create internal administrative oversight committees within ministries and public institutions to ensure decisions are legal before implementation, thereby preventing administrative disputes.

**3. Accelerate the resolution of administrative disputes:**

Provide the administrative judiciary with sufficient human and material resources to reduce the time required to resolve cases related to disputes over administrative decisions, thereby deterring administrative excesses resulting from these decisions.

**4. Promote legal awareness among citizens:**

It is important for citizens to understand their rights and the limits of administrative authority. This can be achieved through legal awareness programs in the media, on electronic platforms, and in educational institutions.

**5. Review legal provisions that grant broad powers to the administration without sufficient oversight:**

Reassess provisions allowing the administration to make significant decisions without sufficient oversight, such as expropriation for public benefit or institution closures.

**6. Leverage digitization to document administrative decisions:**

This would enhance transparency and enable regulatory bodies, whether administrative or judicial, to oversee the legality of administrative decisions in the shortest amount of time possible.

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