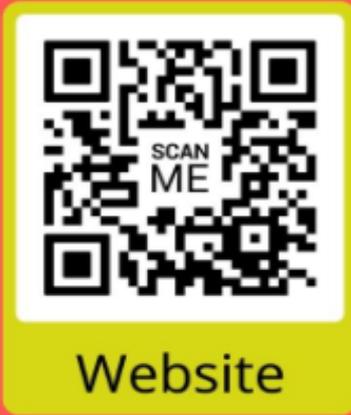


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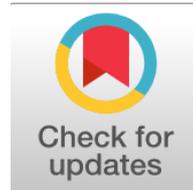
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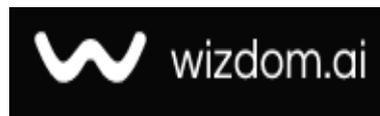
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## The Effects of Digital Mechanization on Administrative Decision-Making

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### Abstract

**General Background:** Public administration is undergoing rapid transformation through digital mechanization, shifting from paper-based processes to electronic systems for data collection, processing, and decision-making. **Specific Background:** This transformation has altered the formation, issuance, and implementation of administrative decisions within a technological environment where legal principles intersect with digital systems. **Knowledge Gap:** Despite increasing reliance on automated systems, existing Iraqi legislation lacks explicit regulation of electronic administrative decisions and their legal implications. **Aims:** This study aims to analyze the legal foundations of digital mechanization, examine its effects on the elements of administrative decisions, and assess the adequacy of the Iraqi legislative framework in governing automated decision-making. **Results:** The findings indicate that digital mechanization restructures administrative decisions by integrating data-driven processes, modifies elements such as competence, form, and subject matter, and introduces electronic notification and publication mechanisms. However, legal responsibility remains attributed to administrative authorities, while risks to rights and freedoms persist due to algorithmic errors and insufficient legal safeguards. **Novelty:** The study provides a comprehensive legal analysis linking digital mechanization with traditional administrative law principles within the Iraqi context. **Implications:** The results highlight the necessity of a clear legislative framework to regulate electronic administrative decisions, ensure accountability, and balance technological development with the protection of legality and individual rights.

#### Highlights:

- Identifies Structural Transformation of Decision Processes Through Automated Data Systems
- Demonstrates Persistence of Institutional Liability Despite Algorithmic Involvement
- Reveals Regulatory Gaps in Governing Electronic Procedures and Legal Safeguards

**Keywords:** Digital Mechanization, Administrative Decision Making, Electronic Administrative Decision, Legal Responsibility, Iraqi Administrative Law

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## Introduction

### First: Definition of the Topic

At the present time, administrative activity is experiencing a qualitative change due to the rapid growth in the available technology, especially in the sphere of information systems and automated systems, which have contributed to the penetration of digital mechanization in the diverse areas of public administrative activity [1][2][3]. This change has been directly mirrored in the administrative decision in that it no longer is developed and implemented in a conservative surrounding that utilizes nothing more than a paper-based processing and human hand; but has instead been linked to electronic systems that gather, process and analyze data in electronic format. This shift has not been confined to the official instruments of giving administrative will, but it has spread to include the steps of creating and making the decision and the channels of applying the decision, thus, establishing a new model of interaction between administration and technology [4][5][6].

A qualitative change is also observed in the administrative work in the modern era due to intensive technological change, especially in the sphere of information systems and automated systems, which entailed the introduction of digital mechanization in many areas of the work of the public authorities [7][8]. The administrative decision has been directly affected by this transformation in that, the decision is no longer developed and adopted to be processed in traditional set up that solely depends on paper based processing and physical efforts but has since been linked to electronic systems that store, process, and analyze information digitally. This change has not been confined to the official method of revealing administrative will; it has spread to the modes of preparing and drawing up the decision and the processes of the decision implementation and has produced a new pattern of administration-technology interaction [9][10].

Considering this development, the administrative decision has been placed in an electronic domain where the technical factors interact with legal regulation by posing issues of the degrees to which the digital mechanization influences the factors, pillars, and traditional assurances of the administrative decision [11][12]. Technology is no longer a secondary instrument, but has now become integrated into the organizational structure in which the administrative decision is being executed, and this requires a legal methodology that is able to adapt to this change and identify the boundaries and consequences of such change [13][14][15].

### Second: Importance of the Research

The relevance of the research is associated with the fact that the issue of digital mechanization is new and directly affects the organization of the classical administrative decision, not to mention the growing range of the use of digital systems in state institutions [16][17][18][19]. It is also important in that it explains the legal context governing the electronic administrative decision and tells how far the current legislation is sufficient to support this development especially considering that the automated decision is not specifically regulated [20][21][22][23].

The topicality of the research is also manifested in the fact that it refers to a real management environment, which is experiencing a gradual increase in the extent of dependence on digital tools, which makes the analysis of its legal impact directly associated with preserving legality and ensuring stability in the legal status of individuals. It also helps in bringing out the delineation of technological development versus the needs of the judicial supervision of the administrative decision in electronic format [24][25][26][27].

### Third: Research Problem

The research issue is the degree to which the nature of the administrative decision, its components, and the assurances of its legality are impacted by the digital mechanization and whether the current legislation is adequate in terms of regulating the electronic administrative decision in relation to its issuance, implementation, and the accountability of the administration towards it. There is also the issue of determining the scope of legal responsibility in cases of automated determination which can be issued and may have effect in the legal stand of a person [28][29][30][31][32].

The question is even more profound in the definition of whether the overall provisions of the administrative law are adequate to consider the specificity of the electronic ruling, or the technicality of the digital mechanization necessitates a special law that would more clearly define its controls and norms. In line with this, the study attempts to address the following query [33][34]: Do the current Iraqi legislative regulations adequately govern the electronic administrative ruling and contain its impacts considering the digital mechanization that the administration depends on?

### Fourth: Research Objectives

- 1.To explain the phenomenon of digital mechanization and its legal basis in the context of the administrative law.
- 2.To examine how the digital mechanization affects the components of the traditional administrative decision.
- 3.To elaborate on how digital mechanization was used in enforcing the electronic administrative decision.
- 4.To analyze the legal responsibility that will come as a result of the automated decision.

5. To analyze how well the legislation framework in Iraq is functioning to control the electronic administrative decision and to offer suitable solutions.

## **Fifth: Research Methodology**

To respond to the issue that is presented within the framework of this research, the analytical methodology was embraced in discussing legal documents on the topic, by invoking judicial decisions and explaining how they have dealt with the problem of the impact of digital mechanization on the administrative decision.

## **Sixth: Research Plan**

To answer the issue raised, this paper was split into two parts that had two subsections each. The former deals with the essence of digital mechanization, whereas the latter deals with the effects of digital mechanization on adoption and enforcement of the decision of the administration.

## **Methodology**

This study used qualitative analytical legal approach to assess the impacts of digital mechanization of administrative decision making in the context of the general principles of Iraqi administrative law. The research was predominantly based on an analytical analysis of legal texts, legislative provisions, and books on digital administration and automated administrative decisions. Methods: To assess how relevant rules of law constrain systemic digital transformation throughout the context of electronic transactions and administrative actions, we systematically reviewed Iraqi legislation, focusing on the aspects of electronic signature and electronic transactions (Electronic Signature and Electronic Transactions Law No. 78 of 2012), relevant provisions of general principles of contract (Iraqi Civil Code No. 40 of 1951), confidentiality and privacy of electronic documents (Electronic Signature and Electronic Transactions Law No. 78 of 2012), state council law, and many other provisions (State Council Law No. 65 of 1979). Also, the research examined Iraqi courts' decisions issued by administrative courts in Iraq, including rulings of the Supreme Administrative Court and Employees' Court to describe thousands of decisions issued by courts to identify how the judiciary interprets and applies legal principles for administrative decisions occurred or supported by digital systems. This methodological approach also involved studying recent legal literature and scientific publications on e-government, digital governance, and automated decision systems to frame the theoretical and normative basis of digital mechanization in public administration. Using comparative interpretation of these sources, the study assessed the impact of digital technologies on traditional components of administrative decisions, like competence, form, subject matter, and mechanisms of implementation. It then explored some of the various elements of the analysis needed to uncover the legal problems created by automated decision-making, which are related to the pursuit of an automatic model of fulfilment of administrative responsibility, of individual rights, as well as of norms regulating electronic administrative procedures. The component of DRM study that investigated the legal theoretical aspect was used here too, so that combining doctrinal legal analysis with some quantitative analysis of legislative and judicial materials, it attempted to achieve a full picture of the reshaping of administrative decision-making through digital mechanization and to claim the sufficiency of existing Iraqi legal regulations to cover under the effects of this technological transformation.

## **Result and Discussion**

### **Section One**

#### **The Nature of Digital Mechanization**

Modern era administration work is undergoing a paradigm shift due to the rapid technological growth that has resulted in the digitalization of the world of various areas of the state administration. The administrative procedures are not confined to the past paper-based trend; it has been gradually approaching the automation and electronic data processing. This change has resulted in new ideas, firstly, the digital mechanization, and the electronic administrative decision, which is a logical continuation of the evolution of the administrative role.

Due to the significance of the topic, as well as to discuss this specific matter with accuracy, this section is going to be subdivided into two subsections. The former subsection will focus on exploring the idea of digital mechanization and its components, whereas the latter subsection will shed light on the benefits and issues of digital mechanization and its implications towards the administrative decision.

#### **Subsection One**

##### **The Concept of Digital Mechanization and Its Elements**

Digital mechanization has become one of the foundations of the modernization of the administration of the population, since it offers the necessary technological equipment that contributes to the organization of processes and facilitates the speed of decision-making. Coming up with a definition of its concept would entail clarifying its components and the law on which it is based in the context of the principle of legality and subordination of the administration to the rules of the law.

To obtain a wholesome legal insight of the subject matter, this subsection is further categorized into two folds, the first

branch will focus on defining digital mechanization, and the second branch will focus on aspects of digital mechanization.

## First Branch

### Definition of Digital Mechanization

Digital mechanization has been viewed as one of the most salient changes that have been experienced in the contemporary years by the public institutions in the contemporary and progressive world as the public administration has changed its traditional model of paper transactions and manual operations to the modern model, which is based on electronic systems and databases and intelligent algorithms. This has brought about radical changes in the nature of administrative work especially in areas such as administrative decision-making.

Others define it as: (the application of technological tools and information system to achieve the administrative processes automatically, with the objective of enhancing the speed of execution and decrease dependence on human intervention) a definition that puts much focus on the procedural facet of the mechanization as a helping device to enhance operational efficiency in the administrative machine.

It has also been defined by others as: (the process of converting administrative activities and operations in the traditional form to digital models which are based on software, databases, and automated systems in collecting information, processing information and making decisions based on information) a more general definition than the simple technical automation, but which also encompasses reorganizing administrative work under the influences of the digital environment.

A third method characterizes digital mechanization as: (the introduction of artificial intelligence technologies and big data analysis into the system of the public administration, making it possible to make semi-independent decisions and follow the specified algorithms) which reflects the high level of mechanization, in particular, with the creation of intelligent systems of learning and analysis.

Digital mechanization in Iraq has been dealt with in terms of its relationship with e-administration. According to some Iraqi scholarly administrators, it is: (the usage of the modern electronic tools in the execution of administrative tasks in the name of speed, precision, and transparency in the provision of the administrative rulings, without breaching the principle of legality and guarantees of individuals) It is important to note that this definition relates the technical dimension to legal restraints, which is very significant in the Iraqi legal context in light of the rule of law and the subordination of the administration to judicial authority.

The facts on the level of Iraqi legislation are observed to note that the legislator has not given a clear definition of the concept of digital mechanization or digital administration in the existing administrative legislations and has not clearly touched the concept of the electronic administrative decision or the automated decision. Rather, legal framework of the digital environment is controlled by a special legislation, i.e., the Electronic Signature and Electronic Transactions Law No. (78) of 2012. The Iraqi legislator was interested in working on the technical issues of validity and legal authenticity of electronic transactions, but did not stipulate that digital mechanization was an integrated administrative system. The article (1) of this law defines electronic transactions as: (electronic transactions: any dealing, exchange or contract by electronic means).

Based on this definition, it is evident that the Iraqi legislator focused on the tool of the transaction or contracting the electronic tool without providing the regulation of the automated decision-making process of the administrative machine or clearly defining its legal character. The book is broad and covers different kinds of transactions, that is, civil, commercial and administrative. As the Iraqi law has not offered a definition of what constitutes digital mechanization, we define it as follows: (a legal-technical system that is based on electronic data processing by the means of pre-determined programs and algorithms to give support, assistance, or issue the administrative decision, even though it is still attributed to the competent administrative authority, whose actions are considered legally binding).

Lastly, one can say that digital mechanization does not simply involve the utilization of computer or software in the work of the governmental institutions; it signifies a restructuring of the administrative thought process and the information content of the decision made. The traditional administrative decision was the creation of the will of the competent employee based on studying the facts and the surrounding circumstances, but under the digital mechanization, the administrative decision has become partly or totally reliant on digital data processed with the help of the electronic system.

## Second Branch

### Elements of Digital Mechanization

Digital mechanization lies in a complex of interconnected components that make up the technical and organizational infrastructure needed to turn the administrative work not in its usual form but in an automated state. The elements are complementary such that they would make the digital system effective and the decisions that are made within the framework of the system to be integrity sensitive. This will be covered in the following manner:

#### First: The Human Element in the Digital Mechanization System

The human factor is the main basis of the success of the digitalization projects of the public administration since it is the

main source of information and the one that enters, processes, and oversees the outcomes of the actions. Although digital mechanization is technical in nature, it cannot exist without the qualified human resource who run the system, control their operation and who make sure that they adhere to legal and regulatory laws and regulations.

The human factor is considered to be the real capital of the mechanization system, which is the technical professionals, software engineers, data analysis specialists, and even the administrative personnel, working with digital systems on a daily basis. These are the human and functional environment on which the transition of the traditionally administered administration to the automated administration depends.

To this end, successful digital mechanization presupposes that the human factor should be technically qualified and trained with the help of special programs following the recent technological trends. This will help personnel to operate digital systems effectively, learn how they work and cope with technical failures or difficulties that might occur. The employees are also expected to be able to utilize the available technological potential to enhance the performance of the administration, speed up the processes and advance the quality of the administrative decision making.

## **Second: The Necessity of a Technical Infrastructure in the Digital Mechanization System**

The main technical component on which the digital mechanization of public administration is anchored is computers and electronic devices since it is impossible to even imagine the practical implementation of mechanization without an integrated technical base that involves computer hardware and both internal and external communication networks. These tools are the executive tools on which data is entered, processed, stored and retrieved as required to allow the administration to conduct its functions in an automated digital form.

To perform their duties in the context of digitalizing the processes, employees will require an electronic network connecting computers in one institution, as well as connecting them to broader networks through which other departments can exchange information. The internal networks (Intranet) are used as the means of communication between the divisions and the administrative units, whereas external networks (Internet or combined government networks) are the ones that allow the communication with other entities, which can only contribute to the administrative integration and the speeding up of the workflow.

Digital mechanization will be successful in case of the administrative information technology, which is mainly, computer technology and communication systems, since the technology is the major use of processing information and provision of the same at the right time and in the right format to the decision-makers. A computer is not a solely machine process; it is an interpolating and processing mechanism, which is able to follow the complicated arithmetic and rational tasks within brief periods of time, which is the direct indication of the efficiency of the administrative decision-making process.

## **Third: The Legislative Framework Necessary for the Success of Digital Mechanization**

Digital mechanization will not be able to fulfill its goals in the development of administrative work without the proper legislative framework acknowledging it, regulating the mechanisms of its implementation, and determining the legal impacts of such work. Mechanization cannot only be successful in the circumstances of the presence of technical infrastructure and human resources; it should also be explicitly defined by the legislature that made the digital procedures, made decisions using automated systems, and accepted the validity of electronic documents.

This involves defining the conditions to be adopted in carrying out digital mechanization in the public administration, legal limits to cooperation and exchange of data among government institutions, and giving assurances to safeguard privacy and information security. It must also revise the traditional legal rules that were made to work in a paper based setting in such a way that they do not hinder the delivery of services or issuance of decisions using digital tools.

At the legislative level, the legislator is given credit in terms of enacting the Electronic Signature and Electronic Transactions Law No. (78) of 2012 that acknowledged electronic transactions and gave them a legal bearing on the issue of electronic signatures and their persuasive impact. Nevertheless, even though it is an important law, it does not directly consider the regulation of the digitalization of the public administration, nor it is considered in the context of the automated decision of the administration and the legal liability obtained.

The law was more centered on attaining legitimacy of digital documents, without a comprehensive structure of regulating the administrative shift to automated systems, demarcating the sphere of application of algorithms in the making of administrative decisions or the assurances required in safeguarding individual rights when digital decisions interfere with their legal status.

Thus, it needs a new legislative intervention or a revision of the current law to regulate digital mechanization in a more comprehensive manner, specify the legal foundation of electronically issued administrative decisions, and specify the purpose of limits of responsibility of such decisions, as well as establish the means of their challenge.

## **Subsection Two**

### **Advantages and Challenges of Digital Mechanization on the Administrative Decision**

Digital mechanization has generated a solid change in the character of the administrative decision as to its form of issuance,

its subject matter and its legal consequences. Administration is no longer based on direct human judgement; decisions are developed in the digital space that now is based on data processing and automated systems. This change has had several effects of both positive and negative types, including the improvement of efficiency and transparency, and the ones that increase the legal issues of responsibility and the safeguarding of rights. In this regard, the proposed study will describe these implications and examine how they affect the legality and legal viability of the administrative ruling .

Since the topic is important and to discuss it accurately, the subsection will be split into two branches; the first branch is aimed at analyzing the pros of digital mechanization on the administrative decision, whereas the second branch will discuss the issues of digital mechanization of the administrative decision.

## **First Branch**

### **Advantages of Digital Mechanization on the Administrative Decision**

Digital mechanization has also helped to develop administrative decision making process through speed, accuracy and minimization of human error. It has also served the purpose of fostering transparency and enhancing performance efficiency in the case of the public institutions. In order to attain a holistic legal comprehension on the subject, the following issue is going to be addressed:

#### **First: Enhancing Efficiency and Speed in Administrative Decision-Making**

The most glaring goals pursued by the public administration are efficiency and speed in the context of enhancing the functional operation of the state organization as the successful operation of the institutions is associated with the execution of transactions and decision-making in a timely and as simple way as possible. De-digitization of the administrative work and the decision-making process are also effective tools in this case, which have been introduced by digital mechanization, to restructure the administrative work.

The introduction of electronic systems to the administrative units has minimized the routine practices that used to take long durations in the old system that was paper-based. Rather than the transfer of transactions being done manually between various departments, the flow of data is currently transferred electronically in real time between the concerned departments, which will help to minimize administrative delays and minimize the number of pending transactions.

An illustration of increased efficiency is that automated systems are able to gather and process information within a significantly reduced amount of time, relative to manual processing. A decision made by an administrative body, which used to be based on consulting several physical papers, depends on a computerized database allowing to access all the necessary information immediately so that the person making a decision could create a perfect and full picture before presenting a decision.

Digital mechanization also helps decreasing the level of human error because the electronic systems are guided by predetermined standards to process the data. To illustrate the above, in the case of an electronic application being made to obtain a permit, the system will automatically compare the data inputted into it with the legal requirements and any shortfalls or defaults will be detected without human intervention at each point in the process. This, in its turn, improves the quality of decision and minimizes the risks of differences in the treatment of different people.

Digital mechanization on the other hand assists in rationalizing administrative resources by decreasing the use of paper, decreasing the cost of archiving and also the number of employees that they have to assign to routine activities. This is not to mean that the human element will be removed but rather shifted towards more specialised and creative work thus enhancing the overall performance of the institution.

Quality of administrative decisions is directly influenced by the speed of the digital mechanization because the more they are being issued on time, the more they are likely to fulfill the will of the people. Slowness in delivery of decisions particularly in economic or service-based sectors can cripple the interests of individuals or destabilize the administrative processes. Digital systems, though, enable decisions to be made in brief periods of time and in certain instances, instantly in case all the legal requirements are satisfied.

Besides, the process of incorporating digital systems in various institutions improves speed in the process of making decisions on a larger scale because data can be shared electronically among the various government institutions without necessarily engaging into protracted formal correspondence. This helps in speeding up the joint processes like giving approvals or licenses that involve different authorities to be coordinated.

Moreover, having an electronic system of transactions tracking allows the administration to stay up-to-date on workflow and promptly notice and resolve areas of administrative bottleneck. Digital mechanization is not, therefore, restricted to faster decision issues but continuous review and enhancement of administrative performance is also possible.

But efficiency and speed due to digital mechanization is dependent on how the electronic system is designed correctly, the precision of the input data, and the qualification of the human manpower to handle the system. In case of inaccuracy of the data or the system is faced with technical problems, this can contribute to the negative results and impact of the decisions made.

In turn, the fact that the Iraqi government is starting to automatize services in various ministries and institutions like electronic taxation and online application portals is a practical application of the principle of administrative modernization, although it is not directly legislated under the legislation titled as digital mechanization. This suggests a corporate desire to become faster and more transparent in their decision-making process despite the legal framework being in need of development.

The constitutional and administrative legitimacy of the use of digital mechanization in the context of Iraq, therefore, may be explained as the need to secure the appropriate operation of governmental institutions, rationalize the public funds, and increase the efficiency of the administration in accordance with the overall provisions stipulated by the Constitution, as well as the current legislation.

## **Second: Supporting Transparency and Combating Administrative Corruption**

One of the most significant values of the modern administration is transparency because it demands clarity of administrative processes, potential tracing of the procedures, and allow people to receive decisions that influence their legal status. One of the most severe phenomena that undermine the effectiveness of the work of the state organizations and jeopardize the trust between the administration and society is administrative corruption. In this regard, digital mechanizing has created a good means of ensuring transparency and limiting the instances of corruption.

Direct contact between the employees and the applicants is one of the main ways in which corrupt practices, including mediation, bribery, or abuse of power can take place and digital mechanization has helped to reduce the same. When the applications are sent electronically and the automatic system is involved according to the ready-made standards, the chances of the unauthorized personal intervention are limited, and the administrative decisions become more objective and based on clear data.

Moreover, the electronic procedure record allows tracking the development of a transaction since the submission date to the decision issuance date, which is made possible by the digital systems. Such a record enables oversight authorities to assess the measures that were followed in the course of the transaction and determine the areas of delay and manipulation in case they exist. Therefore, not only does digital mechanization speed up processes, but the administration becomes more accountable to the digital mechanization.

The other feature of increasing transparency is the possibility to post decisions and instructions on the official websites of the government institutions and allow the citizens to access them with ease and avoid monopolization of information inside the administrative institution. Once a decision has been proclaimed electronically, it is liable to the societal scrutiny and it is hard to make any amendments or to hide the evidence.

Nevertheless, whether digital mechanization will be effective when it comes to fighting corruption depends on how well systems are designed and how they are secured against attacks or manipulation. Corruption might change into a technical mode of corruption as opposed to the traditional form provided that there are no proper controls placed in systems or there is no routine check of the systems by capable authorities.

By this, digital mechanization can be viewed as a significant instrument of facilitating transparency and fighting administrative corruption in Iraq by minimizing the causes of unreasonable human intervention, documenting processes, and empowering bodies of control to do their job successfully. The accomplishment of such an objective, though, is provided through the completion of the legislative framework and the advancement of integration between digitalized systems and the supervising bodies to provide protection of governmental finances and the unification of the principle of integrity in the organization of the state.

## **Second Branch**

### **Challenges of Digital Mechanization on the Administrative Decision**

Although the digital mechanization provides the benefits, it can also start certain issues connected with the threat of technical failures or violation of rights and freedoms. In this regard, there is a need to scrutinize these challenges to make clear the extent to which it can be used and how it can be conformed to the principle of legality. In order to have a holistic legal perspective of the issue, the following issue will be enumerated:

#### **First: The Legal Responsibility Issue for the Automated Decision**

Digital mechanization in the context of the public administration has given rise to the new form of decision called an automated decision, which is either issued in full or in part by an electronic system based on data-processing algorithms and without the human intervention in the whole process. Although this form of decision is fast and accurate, it poses a basic problem of establishing the legal responsibility in the occurrence of such decision resulting in harm or in the change of legal statuses of the people.

In old administrative decisions, responsibility is easily assigned to one of the competent employees or to the administrative body making the decision. When dealing with an automated decision, it might seem that the decision was given by the electronic system in the first place, particularly when it involves the use of automated data processing with no human intervention. The question arises: should responsibility be put on the program or the technical system or should it be left on

the administration?

An electronic system could not be discussed as an independent legal person, as it has no self-will and cannot decide according to the law. Consequently, the blame is still on the administrative body who adopted and utilized the system to make the decision. The device is just an executive machinery whereas the legal will of the administration continues with the design of the mechanism and the establishment of the norms of the standards.

The administration in the Iraqi scenario can be held liable by application of the broad principles of tort liability enshrined in the Iraqi Civil Code No. (40) of 1951 and in this case in Article (204) which states the following: (Any act that causes damage to the other will prompt compensation). To this end, when an automated ruling causes damage based on a malfunction of the system in its design or operation, the administration is liable since it is the controlling authority and the ruling organ as well.

Also, one can make recourse to the principle of state liability of the actions of its employees acting in line of duty, which was firmly established in the administrative jurisprudence and is simply inferred by the structure of the State Council Law providing the administrative courts with the jurisdiction over compensation claims due to unlawful administrative decision. In that regard, nothing exempts the administration of the consequences of its decisions in case of using some technical tool.

The Iraqi administrative courts have always supported the principle of administrative responsibility of the decisions of lawlessness and damage of the same. According to the decision of the Supreme Administrative Court it has been decided as follows: (The administrative authority is liable to compensate the person, who suffered damage as a result of the adoption of the unlawful administrative decision, on condition that its fault is proved and the causal connection between the harm and the harm inflicted is established)

According to this judicial approach, it is realised that the liability of administration is rooted on functional fault whenever damage occurs through its ruling, irrespective of the vehicle through which the ruling was given. This does not mean that the adoption of an electronic system or an automated mechanism exonerates the administration, since the decision is still legally assigned to it and it is still the competent authority over its legality and fitness.

Nevertheless, dealing with such concerns in the context of the Iraqi courts, one will find that there is an evident legislative loophole as far as the direct legislation of automated decisions is concerned. The exact definition of the electronic or automated administrative decision is not given in the current legislation, and there are no special guidelines of information on the liability basis in case of an error in an algorithm or automated data-processing system. Rather, the case is referred to the ordinary principles of civil and administrative law, which primarily aims at dealing with human mistakes, not highly technical mistakes the root of which can prove hard to determine precisely.

Also, the lack of legislative provisions that regulate the design processes of automated systems, setting norms of technical control, and the duties of the administrative body in the testing of digital systems prior to their implementation make the task of the administration on the basis of general principles unaccompanied by a comprehensive system of rules and regulations that reflect the specifics of current technical risks. It is possible that this legislative gap can create practical challenges in establishing the liability and scope of error, especially in situations where the damage is caused by a complicated interaction between programming and data. Therefore, automated decision control within the Iraqi law remains based on the traditional regulations, which are not completely ready to address the peculiarities of digital mechanization, which emphasizes the necessity of obtaining a more specific legislative intervention to control responsibility in this area.

## **Second: The Issue of Infringement on Rights and Freedoms**

Although digital mechanization has its merits in terms of speeding up administrative tasks and increasing their efficiency, it brings forth a series of threats with respect to the civil rights and freedoms, especially when the administrative decision is made mechanically and without any personal approach and control. The shift toward the digital space must not lead to the violation of the constitutional rights that provide or protect the citizens against the misuse of power.

Among the most notable dangers is a possible violation of the principle of equality in the eyes of the law since automated systems are based on algorithms and standards that are programmed in advance and can discriminate people unfairly in case the programs are poorly designed. When the source of input is faulty or represents prejudiced classifications, the decision made can result in the production of results that have an impact on legal positions, which are not justified through legitimate means.

The next threat is that the right to privacy may be violated because digital mechanization relies on the use of the volumes of personal data, including financial, professional, or health information. Without adequate protection measures, or stringent control over data usage, there is a possibility of breaches or illegal use of such information, and this is infringement of personal privacy.

These rights are guaranteed in the Constitution of the Republic of Iraq of 2005. Article (15) states that: (Every person is entitled to life, security, and liberty, and these rights cannot be limited or denied to him or her without due reasons and in case of a law established. Also, Article (17/First) is a statement: (Every person is entitled to personal privacy in ways that do not contradict with the rights of others and public morals). Based on these clauses it is clear that any administrative ruling be it traditional or electronic those that limit rights and freedoms should not be made without the provision of clear legal rules and under judicial supervision.

The other danger of automated decisions is the possibility that the right to defense or objection of a person is deprived in case a clear procedure is not offered to review the decision or demand its reconsideration. Other digital systems can simply provide a rejection decision or sanction without giving a particular explanation, which makes it hard to make sense of such a decision and appeal it to an afflicted individual.

Iraqi administrative courts have also focused on the need to respect legal guarantees in making administrative decisions. The Supreme Administrative Court has held that: (The administrative decision covering a legal position of the individual should be founded on the proper reason, and it should indicate its grounds clearly, otherwise, it can be annulled on the basis of illegality) This practice of the judicial system proves that the provision of reasons and a right of appeal are the core of the rights protection that should also be guaranteed to the decisions that are formed by automated systems.

Based on this, the idea of digital mechanization is significant to the development of the administration but there are dangers that could arise to the rights and freedoms in case of not having explicit legal protection. Thus, a legislative framework governing automated systems use and requiring the administration to consider the tenets of legality, equality, transparency, and the right to litigation is required to bring about a balance between the technological development and the need to safeguard the constitutional rights of individuals.

Nevertheless, these risks in the Iraqi legal context show a gap in legislation in the regulation of automated administrative decisions, which is not explicit and complete. Despite the fact that the current laws confirm the overall principles regarding the right and freedom protection, there are no specifics of regulation that describe how the automated systems should be used to issue administrative decisions, as well as which criteria should be met to make sure the algorithms are not discriminatory or biased. The legislation, too, fails to compel the administration by clear terms so that people can obtain the technical underpinning of an automated determination or clarify the procedure that prompted the delivery of the determination, which, in practice, may inhibit the efficiency of the right to challenge and inspect.

Moreover, the lack of particular laws on personal data protection that strictly govern the process of data gathering, processing, and storage in the new context of intelligent systems makes the legal framework ineffective, which is required to protect privacy in the digital world. As much as general rules offer some protection, they have not been formulated to cater to the technical complexities of large-scale automated data processing. The automated decisions regulation in Iraq, therefore, continues to be based on the traditional provisions that fail to fully reflect the specifics of the digital risks, thus, necessitating a more specific intervention that is also more consistent with the technological change and introduces explicit protection measures to the rights and freedoms in the context of the automated administration.

## Second Chapter

### The Impact of Digital Mechanization on the Issuance and Implementation of Administrative Decisions

The digital transformation is among the most notable characteristics of the modern administrative development because nowadays the employment of technology is not confined to the support of processes but is also associated with the impact on the very nature of the work of an administrator. One of the elements in this change is the incorporation of digital mechanization in all levels of the administrative decision, starting with its preparation and formulation, then proceeding to its issuance, and finally its implementation and establishment of the legal implications. This has resulted in the re-characterization of the relationship between the administration and the use of technology tools.

This chapter, therefore, is to show how digital mechanization can be used when formulating, issuing and implementing administrative decisions, as well as interpreting its effects on the ingredients and legal safeguards of such decisions. Considering the significance of the subject and seeking specific treatment, this chapter is split into two parts, the first one deals with the effect digital mechanization has on the issuance of administrative decisions, whereas the second part of the chapter considers the same issue through the lens of the implementation of electronic administrative decisions.

#### First Section

##### The Impact of Digital Mechanization on Administrative Decision-Making

With digital transformation, the administrative decision-making process has observed a significant change in the processes of its creation and manifestation, as the administration began to turn to digital systems at different phases of its activity. In this regard, the role of digital mechanization in administration decision-making and its influence on the elements and legal character of the decision should be explained.

As a way of coming up with a holistic legal understanding of the subject, this section is further subdivided into two branches, with the first branch focusing on the implications of digital mechanization on the element of competence in the administrative decision and the second focused on its implications on the elements of form and subject matter in the administrative decision.

##### First Branch

##### The Impact of Digital Mechanization on the Element of Competence in Administrative Decisions

More recently, there has been a qualitative change in the administrative decisions that have been introduced to digital

mechanization systems and artificial intelligence technologies in the public institutions. The preparation and formulation of decisions is no longer undertaken in traditional methods where direct human study is relied upon but using information systems that gather and analyze information and make their own proposals or even make a decision semi-automatically. This revolution brings up quite important legal concerns about whether it affects the elements of administrative decisions, especially the element of competence which is one of the foundations of the principle of legality.

Competence is the legal power to make an administrative decision within specified subject-matter, territorial and temporal boundaries vested on a particular body or employee. Competence is a question of public order and thus, any breach makes the decision null and void, and it cannot be contracted and waived.

The fact that digital systems come to the administrative work does not in itself develop new competence, and the fact that the decision-making power of the competent administrative body is relocated to the electronic system does not occur. An algorithm or software program is not an independent will, it is merely a technical means which can be used to exercise competence. In this regard, the decision will still be credited to the administrative authority where the legal control is held that may be ready or produced using an automated system.

The point, though, is that this problem occurs when the administration practically outsources to the electronic system the power to make decisions automatically without real human intervention such as in the case of an electronic system being used to reject application to make appointments, issue fines, or compute taxes on pre-programmed grounds. In those instances, the question would be whether or not this amounts to an indirect delegation of competence or an illegal delegation to a body under which the law would not qualify it.

Competence is not a different concept in electronic administrative decisions as compared to traditional decisions. The will of the administration though digitally prepared should be the will of the legally authorized body or employee. The digital system or the electronic platform does not contribute to competence but rather acts as a technical aid to organize and analyze the information before the decision is made. The administrative body has no power to do anything about the fact that the data used in the preparation phase was accurate as it has been either entered by an automated system or an algorithm since the system does not possess its own legal will and is only acting within the parameters of the given authority.

The existing doctrine believes that the digitalization of the process of mechanization is valid provided that it is subject to the control of the qualified authority, which can still examine, revise, or cancel the ruling. What happens however when the system is left to be the actual decision-maker and not controlled or have the option to intervene in the situation, this is a flaw to the very nature of competence and a deficiency in an essential component to the decision of the administration. competence is associated with the supposition of the lawfulness and this lawfulness is not something that can be given to a machine or algorithm.

Another concern associated with digital mechanization is the question of who holds the accountability in case of an error that is caused by a technical failure in the system that could be a programming mistake or wrong data input. The administrative body is still responsible in such situations, because the system is only one of the vehicles that it uses to operate the public service, and the technical nature of the mistake cannot be used to escape responsibility.

According to the Iraqi laws, an administrative authority can use its powers to come up with administrative decisions electronically, as long as this exercise is within the scope of the legal competency of the administrative entity. The rule of thumb is to hold competence to the body which is legally assigned and remains the same regardless of the form in which the decision is made, whether through the conventional method or through an electronic agent. Article 1 of the Electronic Signature and Electronic Transactions Law, which was enacted by the Iraqi legislator, stipulated: (Electronic intermediary: Executing an electronic procedure or response, with the purpose of either creating, sending or receiving information, etc.). This implies that the electronic means do not introduce any new competence in the administration but rather are an arrangement of technical execution of the established competence statutorily determined such that the subject-matter, time, and location constraints, set by law, are not exceeded.

Nevertheless, it is noted that the attitude of the Iraqi legislature towards the use of electronic capabilities to exercise the administrative competence is rather conservative and even vague. The concept of electronic competence as a wholesome regulatory framework is not clearly enumerated in the legislation but instead it is restricted to general rules in relation to the electronic intermediary and electronic signature without informing us on the impacts of such rules on the aspects of administrative decisions.

However, in a survey of some of the decisions made by the Iraqi State Council courts, a judicial reservation in the appreciation of the electronic competence is evident. Other judicial views have followed the old notion of using competence, which has attached its validity to the issue of the administration decision or order being made in the usual written form. The Employees Court in this regard, in a case that was decided recently, stated that: (The delegation of duties to the appellant through the Viber program lacks any legal foundation under reasonable administrative practice since the delegation orders should be issued in writing). This is indicative of a judicial methodology that still begs a more traditional formal appearance of the exercise of competence and it is forbearing in the exercise of administrative powers of putting legal effects on electronic means of communication.

In this judicial practice, there is a certain conflict between the general legal system where electronic means are already acknowledged as a legally recognized intermediary and judicial practice, which continues to demand the traditional written

form of the exercise of competence. This deviation of the Iraqi judiciary and their resistance to use the concept of electronic competence or accept the possibility of delivering administrative decisions in electronic form is explained by the fact that there is no particular legislation yet that specifically and holistically governs electronic administrative decisions. The absence of a definite legal framework stipulating the guidelines of issuing such a decision, its elements, consequences and methods of appeal can make the courts to follow rather conservative views on the nature of administrative decisions as a precaution to any uncertainty concerning its formal legality, competence or the evidentiary soundness of electronic methods.

## Second Branch

### The Impact of Digital Mechanization on the Elements of Form and Subject Matter in Administrative Decisions

Form is also one of the fundamental components of an administrative decision where the law dictates that certain procedure or conditions must be followed in issuing a decision which might include giving reasons, writing, consultation with a higher authority or consultations with a higher authority. On the other hand, the subject matter is the immediate legal impact to the decision, which can be to create, change, or to repeal a legal standing.

When the digitalization of administration is introduced, it brings to question the degree to which these two aspects will fit in the electronic setting. This branch will treat both of these elements and analyze how they are affected by digital mechanization as follows:

#### First: The Impact of Digital Mechanization on the Element of Form in Administrative Decisions

Form is the external form whereby an administrative decision is put into expression, either written or orally where law allows one to do so. As a rule of thumb, one should have the decision in writing whenever the law clearly states it. In electronic administrative decision, form is symbolized by the electronic document or a notification made by using the approved digital platform, and can be complemented by an electronic signature or official verification code. An electronic decision should comply with the documentation standards, i. e. it should mark the date of issue, the number of the transaction and tag the decision to the authority that made it. Adherence to form in the online space promotes the legitimacy of the judgment and strengthens its legality.

To the extent of Iraqi laws, the lawmaker did not clearly control the nature of electronic administrative decisions. Nonetheless, it has been accepted that electronic documents are legally valid by the Electronic Signature and Electronic Transactions Law that stipulates in Article 2 that: (Information, data, and electronic documents shall enjoy the same legal status as written documents, as long as they satisfy the provisions of this law).

Nevertheless, despite the fact that the Iraqi lawmaker has mostly acknowledged the legality of electronic documents, it has lagged behind the digital administrative advancement by establishing particular stipulations that strictly and fully govern the shape of electronic administrative ruling. It is not enough to consider that the general validity of electronic documents is accepted to discuss the specifics of the administrative decision that is one of the legal acts made by a governmental body and has immediate consequences to the legal status of the people.

The legislator would have been better placed to set down clear rules on what constitutes formal requirements of electronic administrative decision, including that it must be issued by an approved official platform, what constitutes the mechanism of the electronic signature of the competent employee, what are the rules of digital dating, how is electronic notification made and what are its legal consequences.

In this connection, we would offer legislative intervention which implies including certain specifications in the State Council Law or the enactment of a separate Digital Administration Law of the elements of the digital administrative decisions, the formal condition of these decisions, and enshrinement provisions. This would strike the right balance between the requirements of the technology growth and the law. The proposed legislation must also entail an explicit guideline on the legal validity of the electronic copies, the process of appealing the digitally issued decisions, and information security and data protection guidelines that will improve judicial faith of electronic administrative transactions, and minimize judicial reluctance to acknowledge their consequences.

#### Second: The Impact of Digital Mechanization on the Subject Matter Element in Administrative Decisions

The subject matter is the legal impact of an administrative decision, e.g., licensing, declining a request, or creating a certain duty. The concept of an electronic decision is no different to the concept of a traditional decision; it should be legally permissible, legal and defined. The ruling made using a digital system would have to cause a distinct legal impact, one that would not violate legal stipulations. In case the subject matter of the decision is against the law, the decision is faulty by being illegal, be it in paper form or electronically.

At the governmental level of the legislation in Iraq, Article 5 of the Electronic Signature and Electronic Transactions Law No. 78 of 2012 stipulates that: (Information, data, or electronic documents shall not lack legal effect or enforceability simply because they were issued or processed electronically). This is because this provision shows that the legislator was aware of the legal consequences of electronic documents, so long as they satisfy the legal conditions, the same can be said of the electronic administrative decision that can also have valid legal consequences.

Following this, one can assert that the Iraqi legislator has not adequately followed the pace of technological advancements that are taking place in the sphere of public administration, which creates a deficit in the law regulating the process of electronic administrative decisions and their components based on generic regulations. This can create real life trouble to the judiciary, especially when there is an appeal against the rulings passed by automated systems.

## **Second Requirement: The Impact of Digital Mechanization on the Enforcement of Electronic Administrative Decisions**

The implementation of an administrative decision is the point where the decision is switched between simply determining the will of the administration and when it creates a legal impact on the addressees. This is general rule, as an administrative decision does not take effect as against persons until they are brought to their attention, by personal notice or publication, where the decision is a regulatory decision. Since the advent of digital mechanization of administrative activities, the traditional forms of informing people about decisions have changed, and new types of enforcement are based on electronic means, the most prominent of which are electronic notification and electronic publication.

To have a complete legal analysis of this part, it will be subdivided into two subsections and the first subsection will discuss the electronic notification and the second will be electronic publication.

### **First Subsection: Electronic Notification**

The concept of electronic notification is where the administration informs the individual in question of an administrative decision via a digital means, which can be by means of sending it to an official email, using a text message, or a notification on which it appears on the account of the individual in one of the governmental electronic platforms. This approach is one of the most salient evidence of the digitalization of the administrative work process because the notification does not consist of the traditional paper-based system anymore, but rather of an electronic system, which is quick, adaptable, and easy to document.

The significance of electronic notification is that it is a direct and quick way through which the addressee is notified of the decision, thus satisfies the element of certain knowledge, which is when the individual decision is to be enforced to the addressee. It also saves time and money spent in notifying by using paper and eliminates the time wastage caused by the traditional process. Rather than receiving this information by post or through having an official process server notify the individual, the administration may notify the individual when the decision is issued, which leads to the stabilization of legal offices and also speeds up the administrative process.

We can say that the notification in official digital resources or other accounts that are legally recognized serves the same purpose as the one of traditional notification, as long as it is possible to check the identity of the recipient and the process of sending and receiving can be verified technically. It does not actually matter how the notification is made, but that some or positive knowledge of what the decision contained has been established, so that the interested party may be able to exercise his right to appeal, within the time limits laid down by the law. Thus, documented electronic mechanisms along with references to the time of use, a reference number, and recognition of receipt can make the legal positions more stable without the destruction of personal protection.

Nevertheless, electronic notification creates a number of issues, among them being the establishment of identity of recipients, actual delivery of notice and proper recording of date of receipt. The effectiveness of this approach therefore demands a safe electronic system that depends on technical verification systems i.e. the digital acknowledgment receipts or documenting the time the message is opened in the system. The question as to whether the electronic notification suffices to give rise to the enforceability effects may arise. As a result, digitalization will make the notification more efficient and will need clear legislative underpinnings outlining the circumstances under which it will be valid and leaving no room to misunderstand when the effect of the decision will start or when it will be possible to appeal.

Speaking of the stance of the Iraqi legislator on electronic notification and publication, it can be noted that the Electronic Signature and Electronic Transactions Law did not cover the issue of electronic notification explicitly, but the legislator had to comment on it. Nonetheless, the law indirectly mentions the utilization of email as a way of providing notification by outlining in Article (1) of the law aforementioned that an electronic information message is: the data, texts, images, shapes, sounds, symbols, etc. that are created, combined, stored, processed, sent or received electronically.

According to this provision, we find that, though the law gives the administrative institutions the power to make use of the electronic means to announce administrative decisions, the reality of the situation, points to the contrary. Most state departments and government agencies are still reluctant to do the notification or publication of individual administrative decisions using electronic systems. The reason behind this hesitation is that the place taken by the legislator in the said law was conservative and it did not fully or clearly govern the electronic notification and publication; only some types of electronic transactions were restricted to the law.

### **Electronic Publication**

Electronic publication just means that an administrative decision has been announced in an official website or an authorized government platform so that it is publicized. This is the normal way of making regulatory or general decisions that are not to be directed to particular people. Digitalization of automation has provided an appropriate platform of electronic publication, whereby the decisions of the administration can be posted once it is made, with the administration posted on official

websites, which fulfills the principle of publicity and increases the level of transparency. Also, online publication enables the decision to be stored and it can be accessed anytime and the date of publication is recorded correctly.

The other part of electronic publication is the making sure that the decision is received by all the desired recipients. The principle of publicity will not be followed by only posting the decision in a web site, but that site must be popular and easily reachable and user-friendly and without technical limitations and frequent downtime. Otherwise, the publication can be formalistic and not fulfill its intended purpose and thus can create problems in terms of presumed knowledge of decision.

Speed in informing decisions of a regulatory nature, lower cost in printing and distributing information through paper and paper, and ease of providing digital storage and reference to the past decisions, as well as increased transparency in the administration, are the major benefits of electronic publication. It also assists in consolidating information of official source and the chances of inconsistencies or dissemination of false copies are very few.

Nonetheless, the issue of electronic publication is whether it is equal to conventional publication in official gazette or authorized newspapers, especially in the case that there are no clear legal provisions. The overall regulation is that a regulatory decision becomes effective as of the date of its publication in law. Failure by the legislator to postulate electronic publication as an official means will give rise to ambiguity as to whether the decision has started to take effect. However, the contemporary tendency is more inclined to make the official government websites one of the legal means of publication as long as they are formally approved and clearly defined. In this regard, digital automation does not exclude the principle of publication but instead, evolves it to become quicker, more clarified, and more affordable.

In terms of Iraqi law it is apparent that the legislation that will govern the public action, the Iraqi Council of State Law, and even the even more recent Electronic Signature and Electronic Transactions Law No. 78 of 2012 do not contain any specific requirements on the electronic administrative decision in general or any specific description of the method of the electronic effect of the administrative decision, be it through the means of the electronic notification, or the electronic publication.

The above law is aimed at structuring electronic transactions and making them legally valid, but does not deal with how the administration of decisions by the electronic means can be achieved and at what point these decisions are effective once adopted electronically, or how the electronic publication of decisions can be done using specific regulations on the process of such publication. Such a legislative loophole is remarkable considering the fact that the introduction of digital automation in state institutions is becoming a reality.

Hence, the explicit intervention of legislation is evident to control the electronic publication of administrative decisions and to identify its impact in terms of the start of decision and the computation of the appeal deadlines. It is also recommended that the new draft Civil Service Law by the time of its enactment should carry clear provisions on the recognition of the electronic publication and electronic notification as a mode of official means of the legal effect of the administrative decisions, but one should give protection to guarantee the knowledge certainty to the parties involved.

## Conclusion

Within the framework of the digital automation, the administrative decision is integrated into a dynamic regulatory and technological space, in which electronic tools overlap traditional rules of law. It is no longer determined by the mere paper-based processing, nor by the mere administrative discretion, but it has been shaped within digital systems that are based on data and automated analysis and has re-invented the structure within which administrative power is exercised. However, in essence; the decision is a legal act and it is subject to its elements as well as the principle of legality, irrespective of the methods used.

Although the digital automation allows creating the administrative approaches and allows to speed up the performance, the legal issues are also raised, that should be balanced between the technological progress and the preservation of rights and freedoms. Administration to humans remains subject to the rule of law, and automated administration does not modify the rules; only a reevaluation of the rules in the context of this new digital reality is required in which cases the administration decisions are legal, and can be reviewed, and the legal status of individuals in a rule of law system is not threatened.

Upon concluding this study, a set of findings and recommendations has been reached, which are presented as follows:

### First: Findings

- 1.The study revealed that the digital automation has introduced a distinct change in the decision making process of the administration whereby the administration uses the electronically gathered and digitally processed data before arriving at its final decision.
- 2.The research indicated that the move towards automated decisions can be a threat to rights and freedoms, especially when there are technical mistakes or when using erroneous algorithms that influence the legal statuses of people.
- 3.The study came to the conclusion that legal accountability of automated decisions is still placed on the shoulders of administrative authority since it is the qualified agency that oversees the system that undertakes the issuance of the decision.

4.It turned out that the influence of digital automation goes beyond a faster decision-making process and the ability to exchange information; it also touches upon some of the aspects of the administrative decision, in particular, form, content, and authority, by giving them an electronic aspect due to the digital issuance, electronic signature, and digital publication or notification.

5.The digital world has contributed to the enforcement of administrative decisions using electronic notification and publication, which reached more speed and flexibility, but the regulation of such issues is not yet covered in detail by legislation.

6.It became apparent that even the existing Iraqi laws are not effective enough to support the transition towards making decisions in a digital space by showing that a more precise legislative intervention is necessary to control the electronic administrative decisions and their procedural and legal protection.

## Second: Recommendations

1.There is a need to present clear legislative statements that govern the electronic administrative decisions, their constituents, controls, and the enforcement measures either in the Civil Service Law or the State Council Law.

2.Create statutory principles on electronic notification and publication, which identify the time of the decision that can be made and protect the right of people to appeal and to dissent.

3.Suggest that the administrative liability on automated digital systems be controlled by explicit statutory rules, where administrative authorities are required to oversee the correct design and functioning of the computerised systems employed in the making of decisions.

4.Enhance data security structures in state and local government organizations and introduce routine standards of control over digital systems to ensure the right and freedom safeguarding.

5.Strive to provide an overarching piece of legislation in digital transformation in government administration, consistent with the provisions of the constitution and rule of law.

6.Create training on administrative and legal staff to work with automated systems and be able to balance technical effectiveness and legal protection.

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