

Proving of the Electronic Administrative Contract

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This study deals with an important topic of the new administrative law, which is proving the electronic administrative contract to highlight the legal aspects of using the e-government system in the field of administrative agreements. It is discussed through presenting a definition of the electronic administrative contract, and explaining how to prove it by showing the concept of electronic writing with its terms. In addition, it sheds lights on the concept of electronic signature and the conditions that must be met in the electronic signature to prove the administrative contract. Moreover, it reaches several results, most notably, the adoption of electronic means to make administrative contracts is in need to appropriate legislation, qualified personnel and publishing of e-government culture. Also, some recommendations are presented.

Keywords: *Electronic evidence, administrative contract, e-government*

Introduction

At the beginnings of the 21st century, the communications and information technology revolution started and developed an evolution in legal texts and terms whether in civil, commercial or administrative law. Reaching the threshold of a new stage, the information society prevailed, similar to the industrial revolution that developed countries during the past century.

As mentioned above, a new type of contracts has appeared which is carried out via electronic media, especially the "Internet". These kinds of contract called electronic contracts. These contracts allow the parties to have the possibility to establish a mutual dialogue via the



network through the computer screen in an intangible reality that has no lowest foundations geography (Obeidat, 2005).

The electronic administrative contract is nothing more than an agreement made by the public, corporate body by electronic means, in whole or in part, to operate or organise a public facility. The administration intends to adopt the provisions of the general law. Thus, the contracting method differs from that used in traditional contracts based on paper writing. Whereas, in electronic administrative contracts, they are based on electronic and remote means and without the physical exchange of papers.

With the emergence of these electronic contracts and the spread of the Internet, there is an urgent need to find a law to make, prove and implement these contracts because the legal system for traditional contracts is no longer sufficient to regulate this new type of contract. Further, the proliferation of electronic contracts has had a prominent role in developing the Administrative activity. That is, the comparative laws, including European directives, as well as the French Administrative Contracts Act, which stipulated the possibility of concluding administrative contracts by electronic media on the Internet, are directed.

This effect is due to the adoption by European countries and the majority of Arab countries such as Jordan, Egypt, Algeria, Tunisia, Bahrain, and the United Arab Emirates of e-government projects. It was inevitable and realistic and legal because of the use of the Internet to facilitate public facilities and their administration and organisation. Also, it is based on an agreement of the United Nations of electronic commerce and the World Trade Organisation, which recommends its member states to unify their laws in the area of administrative contracts.

The Research Problem

The research problem of the study is that the introduction of the e-government system requires the administration to make its contracts by electronic means, which results in the emergence of the issue of proving these contracts. Is writing sufficient to establish these contracts sufficiently? What is the nature of this writing? Is signing a necessity to declare the contract?

The Significance of the Study

With the emergence of electronic contracts and the spread of the Internet, the need has become urgent to find a law to conclude, prove and implement these contracts as the legal system for traditional contracts is no longer sufficient to regulate this new type of contract. The spread of electronic contracts has also had a prominent role in developing administrative



activity, whereas, the comparative laws, including European directives, as well as the French Administrative Contracts Act, which provided for the possibility of concluding administrative contracts by electronic media on the Internet.

The Research Aims

This research aims to highlight the legal aspects of the use of the e-government system in the field of administrative contracts, especially knowing the extent of development that occurred to administrative contracts in terms of proof.

Methodology

As such, we try to study the subject of proving the electronic administrative contract to know the extent of development that occurred to the administrative contracts in terms of proof adopting the descriptive-analytical approach. The study consists of two sections: (1) the concept of electronic writing, and (2) the conditions that must be met in electronic writing to prove the administrative contract. The second section is divided into (i) the concept of electronic signature, and (ii) the conditions that must be met in the electronic signature to prove the administrative contract. Finally, the conclusion is presented.

The Concept of Electronic Writing and Its Conditions for Proving the Electronic Administrative Contract

This section is divided into two topics. The first one is the concept of electronic writing. The second is the conditions that must be met in electronic writing to prove the administrative contract.

The Concept of Electronic Writing

Electronic writing is a means by which the electronic administrative contract is established. According to the latest amendments to the French civil codification, Article 1316 stipulates within its contents a definition of electronic writing: "The meaning of writing includes every codification of letters, signs or numbers, or any indication of a clear and understandable expressive indication, whatever it may be. The indication that it is used to create or the medium through which it is transmitted"¹.

¹ L'article 1316. "La preuve littérale ou preuve par écrit, Résulte d'une suite de lettres, de caractère, de chiffres ou de tous autres signes ou symboles dotés d'une signification intelligible, qu'elles que soient leur support et leur modalités de transmission". (Jo No: 62 udu 14/3/2000, P.391.



Here, the intended writing is that carried out by electronic means, and the Model Law on electronic signatures has indicated to it "Unistral" as a data message. It defined it as "information that is created, sent, or stored by electronic or optical means or similar means, including but not limited to the exchange of data." Electronically, by e-mail, telegraph, telex or telegraphic copies " ².

In the field of French, Administrative Contracts Law promulgated in 2000 and amended by Decree No. 15-2004, it recognised electronic documents and gave them legal authority as written evidence in the third paragraph of Article 56, as it is mentioned within its contents "All texts of the current decree on writing can be transferred to write on an online medium. "

Likewise, the Jordanian Electronic Transactions Law in Article 2 defined it as "data that takes the form of letters, numbers, symbols, signs or others and is listed electronically or digital or optical or any other similar means in a message or added or linked to it. It has a stamp that allows the identity of the person who signed it and distinguished it from others to sign it and to approve its content.

The administrative judiciary approved the electronic writing, and the French State Council issued a ruling giving the legal electronic writing the legal in the administrative transactions, in its decision issued on 12/28/2001, when considering the appeal of the ruling of the Administrative Court of Nantes issued on 7/6/2001.

Conditions That Must Be Met in Electronic Writing to Prove the Administrative Contract

Comparative laws such as French law and the European Directive on electronic commerce provide for certain conditions that must be met for electronic writing to be a guide that can be presented to the judiciary to prove electronic transactions and the electronic administrative contract.

The following are the conditions that must be met in electronic writing to achieve its function of proof:

The Ability of Electronic Writing for Reading, Understanding and Clarity

For the editor's content to be invoked against others, the writing must be read. That is, the written editor must be written with letters or symbols known to the one who wants to object.

² Article (2 / c) of the UNCITRAL Model Law for Electronic Signatures is available at <https://www.uncitral.org/pdf/arabic/texts/electcom/ml-elecsig-a.pdf>.



If we refer to the electronic editors, we find that writing them on the media in the language of the machine that a person cannot read directly unless the information in the computer. It is delivered with programs that can translate the language of the machine (and its letters consist of expressions between the number zero and one number) into the readable language person intended to protest against this document. Whatever it is, the electronic editors can be read clearly and understandably by using a computer, which means that they fulfil this condition related to being read and understood.

This is indicated by the special standard issued by the International Organisation for Standardisation when it said that "it can be read easily by a person or by using a dedicated machine for that". Further, Article 1316 of the French Civil Code has confirmed this meaning in its definition of electronic writing, as "every sequence of letters, symbols, numbers, and any other signs, indicating what is intended and that others can understand."

In the report submitted to the French government in 1998 - on proof of electronic documents - the French State Council concluded that electronic documents must be clearly understood by others, especially the judge, to be evidence of proof. The judge also has the possibility to seek the assistance of people of expertise in this field, in the event that these electronic documents are not clear and understood. That is, they are encrypted or protected by a special technical system

In proving the electronic administrative contract, French jurisprudence believes that electronic writing must meet the conditions for regular writing, including clarity, portability and understanding. The legislator has equalled between electronic writing and regular writing in terms of legal authenticity, by Article 56 of the Administrative Contracts Act which provided for The possibility of equality between regular writing and electronic writing in terms of conviction or proof.

In establishing the electronic administrative contract, the judge must verify the existence of this condition, especially in light of the administrative law, as he has discretionary power to form his faith from any acceptable evidence. The Supreme Administrative Court in Egypt indicated in one of its rulings that "the judge may determine with all Freedom of evidence that he accepts, or evidence that he pleases, according to the circumstances of the case brought before him." The judge can also resort to experience to verify the availability of this condition since experience is considered as a method of proof in administrative law is in technical matters, whether medical, engineering or computational. Additionally, the administrative judge is not obligated to take the expert's opinion, but rather he takes it as a guide and assistance only. This is confirmed by the judgment of the Supreme Administrative Court in Egypt, "The use of the people of experience as one of the evidentiary procedures is a matter of discretion to the trial court. Opinion for experienced people and it has that Including



taking rest assured him of the expert's report, and to ask her what ended the whole or part of an expert. "

The Ability of Electronic Writing to Save, Continue and Not To Be Modified

It is required for the prerogative to write in the proof, to be recorded on a medium that permits the stability of writing on it and its continuation so that the editor can refer to it whenever necessary to review the terms of the contract or to present it to the judiciary when a dispute occurs between its parties.

If the paper media by its physical composition allows the fulfilment of these conditions, then the use of electronic media raises the question of the extent to which this condition has been met so that it can be considered as a written editor (Al- Jamii, 2000).

In this regard, the physical characteristics of the electronic medium represent an obstacle to achieving this condition because of the physical and chemical composition of magnetic disks used in contracting through the Internet. It is characterised by a degree of sensitivity to what exposes it to rapid damage when the electric current strength is different, or the very different degree of storage. Thus, it is less able than papers to hold information for a long time.

In connection with proving the electronic administrative contract, the French legislator took precautions for this when it obligated the contracting authorities to save all related documents to concluding the contract through the so-called electronic administrative archive. Further, it addresses the candidates to keep the conditions book, the counselling system, and all the documents related to the contract to present it to the judiciary, in the decree No. 2002-692 on the conclusion of administrative contracts by electronic means, as well as Decree No. 2001-846 on electronic auctions.

However, the discretionary power of the judge in administrative disputes allows verifying the availability of electronic writing for preservation and continuity. As a general rule, the administration always maintains the documents and documents related to the contract, in the event that the electronic documents related to the conclusion of the contract are damaged, such as a book of conditions or a consulting system, where the judge may request the administration to provide these documents.

The Concept of Electronic Signature and Its Conditions for Proving the Electronic Administrative Contract

In this section, we will address the concept of electronic signature; then we will present the conditions that must be met in the electronic signature to prove the administrative contract.

The Concept of Electronic Signature

French law defined the electronic signature, as Article 1316 confirmed in its fourth paragraph of Law No. 2000-230 issued on 3/3/2000, amending the French Civil Code that “the electronic signature only indicates the identity of its owner, and guarantees its relationship with the fact that he conducted and confirmed the owner’s identity and validity the incident attributed to him until proven the reverse.”

The electronic law "Unistral" did not identify the electronic signature, indicating only the functions of the signature. As Article (1/7) stipulated the following: "When the law stipulates the presence of a signature from a person who fulfils that condition concerning the data message if he extracted a method for identifying that person and indicating approval.

As for the "Unistral" electronic signatures law, the electronic signature was defined in Article (2/A) as "data in an electronic form included in a data message or added to it or logically related to it, and it may be used to specify the identity of the site in relation to the data message" Article 2/A of the Unistral Model Law on Electronic Signatures of 2001.

The Jordanian Electronic Transactions Law defined it in Article (1) as "data that takes the form of letters, numbers, symbols, signs or others and is listed electronically or digital or optical or any other similar means in an information message or added to or related to it and it has A stamp that allows identification of the person who signed it and distinguished it from others in order to sign it and to impose approval of its content.

Contrary to the French law, the Electronic Signature Law in Egypt No.15 of 2004 concerning the regulation of electronic signature and the creation of the Information Technology Industry Development Authority was affected by the definition of the Model Electronic Signature Law, where Article 1 defined the electronic signature "as what is placed on an electronic editor, and it is taken the form of letters, numbers, drawings, signs, etc., and it has a unique character that allows identifying the person of the site and distinguishing it from others".

In confirmation of the definition of the electronic signature and its legal function, jurisprudence has attempted to give some definitions of the electronic signature.

From French jurisprudence, "that an electronic signature is a set of technical measures that enable the identification of the person who issues these procedures, and its acceptance of the contents of the act on which the signature is issued in relation to him" (Al-Roumi, 2005). While others define it as letters, numbers, symbols or signs, they have a unique character that allows the identification of the person possessing the signature.

Conditions That Must Be Met in the Electronic Signature to Prove the Administrative Contract

The electronic signature is considered as a means of proof of the administrative contract, and it must be met on certain conditions. The Egyptian Electronic Signature Law No. 15 of 2004 and its executive regulations dealt with the authenticity of the electronic signature in the proof whenever the conditions stipulated by law are met.

By extrapolating these texts, it is clear that the conditions for electronic signature in proving electronic transactions, whether civil, commercial or administrative are:

1. The electronic signature of the signer expresses the identity and issuance of the signature correctly, and this is only possible if the site controls the elements of the electronic signature.
2. The necessity of preserving the electronic editor that includes the signature.

Knowing the identity of the signer through signature

For the electronic signature to produce its legal effects, it must express the identity of its owner. It does not mean that the electronic signature enriches or replaces the personal identification card, as this does not mean that the electronic signature replaces the alias. It is meant by knowing the identity of the site through the signature is to be the means of the electronic signature under the sole control of the site.

The use of an electronic signature also entails the issuance of a certificate from the competent authority for this signature, which will serve as an electronic identity card for the signer (Hijazi, 2003). Therefore, to know the identity of the site through an electronic signature, one must study the site's control alone and not others over the electronic signature method, then study the website's identity card.

The Site Alone Controls, Exclusively, the Means of Electronic Signature

Article 1316, in its fourth paragraph of the Electronic Signature Act 2000 in France, stipulated that the signature must be made using a secure means to determine the identity of the signer, ensuring its link with the behaviour that he signed, by stating: "The signature necessary for the completion of the legal disposition defines the identity of the person who invokes it and expresses the will of the parties to act in relation to the obligations resulting from this act. When the signature is done with the knowledge of a public official, it reflects the legitimacy and validity of this act."



In Egypt, article 18 of the electronic signature law issued in 2004 stipulated that the electronic signature is valid for the signer alone and exclusively over the electronic medium by saying: "The electronic signature, electronic writing and electronic editors are entitled to proof if the following two conditions are met:

- a. The electronic signature is linked to the site alone and not others.
- b. The control of the signatory over the electronic medium."

The Egyptian Court of Cassation, in a judgment issued on 9/18/2004, considered that the signature could be a proof of the site's intention to acknowledge its liberation, and as proof of future conflict between the parties with the contents of the contract, and secure it from the amendment. Also, it distinguishes the identity of the owner and identifies him.

The E-Signer's Identity Card

The identity card of the website is a certificate issued during the process of creating an electronic signature that proves the identity of the website.

Article 1316, in its first paragraph "of the aforementioned French electronic signature law", referred to this certificate, as it stipulated that "writing in electronic form is used as evidence in evidence, as is writing on a paper pillar, provided that it is possible to determine the identity of the person Issued by, and prepared and preserved in a manner that guarantees their safety."

Further, Article 1316 emphasised in its fourth paragraph that the method used in the electronic signature must be reliable, to ensure the signer's link with the behaviour that it signed.

In its May 1998 report, the French State Council also stressed the need for a neutral party to the contract to issue a certificate confirming confidence in the electronic signature and affirming the identity of the signer.

In Egypt, the ninth article of the executive regulations of the electronic signature law stipulates that this signature is linked to an approved electronic certification certificate. The validity window issued by an authorised or certified electronic certification authority.

As a result, according to the decree issued by the French State Council on 3/30/2001 for the electronic signature, there are two forms of certificates for electronic signature: the first form is the regular electronic certification form, and the second form is the approved electronic

certification form. Each of them includes specific data that distinguishes it from the other form (Saleem, 2004).

The ordinary electronic certification form (Le certificate électronique (simple)) is an electronic document issued by the authority competent to authenticate the electronic signature, in which it acknowledges the validity of the electronic signature data and its link to the site, and this form does not include other data.

Regarding the approved electronic certification form (Certificat électronique qualifié), it is distinct because it must include several data stipulated in Article VI of the French Council of State Resolution issued on 3/30/2001. These data provide more safety for the stakeholder, and among these data: the name of the holder of the signature or his pseudonym, his job, indicating the period of work for this form, and the code number of the electronic identity card (Al-Merri, 1998).

The Preservation of the Electronic Signature

In Article 1316, the French Civil Code recognised in its first paragraph the necessity of preserving the authenticity of the electronic editor that includes the electronic signature, by stating: "Electronic writing is authentic in proof, as is writing on paper support, provided that it is prepared and preserved in conditions of its nature ensuring its safety." (Al-Roumi, 2005).

The provisions of Decree No.2002-692 on the making of administrative contracts also recognised this condition, when the administration and the candidates were obligated to maintain the authenticity of electronic documents and to ensure confidentiality of electronic signatures.

Article 18 of the Electronic Legislation Law in Egypt stipulates that the electronic signature and electronic writing are entitled to proof if the following conditions are met:

(C): "The possibility of detecting any amendment or alteration in the electronic data of the editor or electronic signature. The executive regulations of this law show the technical and technological rules that are required. What is worth noting is that Articles 14 and 15 of the Electronic Signature Law stipulated the application of these provisions to administrative transactions, including administrative contracts. Also, Article 11 of the executive regulations of this law has added that any scraping, modifying or altering the signed data of the editor electronically, is by using the technology or code of the public and private keys, and matching the electronic certification certificate and electronic signature creation data with the original of this certificate and that data, and by any similar means .all determine the technical and technical controls necessary for that."

According to these texts, the requirement to maintain the validity of the electronic signature is a necessary requirement to recognise the validity of the electronic signature in the proof, especially in light of the risks to which electronic messages are exposed, such as changing, viewing, deleting or adding to them, from the moment they are sent to the moment they arrive (Hijazi, 2003).

Results

1. Electronic writing and electronic signature or the so-called electronic documents are one of the pillars of the electronic administrative contract, as this contract is written by electronic writing, which developed the French Civil Code and European directives for electronic signatures its concept and function. This writing is pronounced with an electronic signature that is its creation by special procedures through specialised agencies called: electronic certification bodies.
2. The electronic documents are the most important means of proving the electronic administrative contract, due to the administration's tendency to prove its contractual links in writing, taking into account other means of proof, which help the administrative judge in achieving a balance between the administration and the other contractor, especially experience and evidence.
3. Electronic documents are customary documents in evidence, but the discretionary authority of the administrative judge enables him to consider these documents in some of the cases before him, simply written evidence that can be reversed in all ways of proving.
4. It is required in the electronic editors to prove the electronic administrative contract. That is, these documents are understandable, readable and clear to others. As well as, it must be able to be saved, continuous, and not to amend. Also, it is required that they are marked with an electronic signature. That is, it must be controlled by the site alone and not others. Also, it must be able to accept the preservation of the moment the electronic message is sent to the moment of its ratification using a technology called the electronic pressure code technology, which is stipulated in French law. This electronic signature must be capable of saving over time by keeping it with the electronic certification authorities.

Conclusion

The electronic administrative contract is generally considered one of the new things in the administrative law. The researcher has concluded that proving this contract is one of the important and worthy topics of study. Thus, this topic is chosen. The study tries to go into various legal aspects in proving the electronic administrative contract. The study focuses on proving the electronic administrative contract with a detailed view of electronic writing and



electronic signature, and their conditions for proving the administrative contract. Then, some results and recommendations are presented.

Recommendations

1. The need for government departments to rely on special legislation for the electronic administrative contract. Various aspects of which are set by government cadres with legal and other technical competencies and to be reviewed continuously, which achieves harmony with the requirements of e-government on the one hand and achieves adequate protection for the rights of dealers in the field of contracts Electronic on the other hand, similar to the experiences of developed countries in this regard.
2. Spreading the legal culture about the e-government system in government institutions and those dealing with them, especially in the field of electronic administrative contracts.
3. Qualifying human cadres working in central and decentralised departments to accommodate the e-government system through specialised courses in this regard.
4. Law faculties, in public and private universities in the Arab countries, have to adopt research within the curricula related to the legal system of the electronic administrative contract, as a contemporary issue to keep pace with legal developments.
5. Inviting the ministries of justice and bar associations in the Arab countries to hold training courses for judges and lawyers to familiarise themselves with the legal system of the electronic administrative contract.



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