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Article

The Legality of Unwritten Administrative Decisions and Their Impact In Terms of Proof and Challenge

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Abstract: This study effectively checks the legality of governing unwritten (verbal) administrative decisions, meticulously addressing their validity, hardships in judicial oversight, and practical implications. While administrative decisions classically need written form to undoubtedly ensure how transparent and accountable, administrative practice strikingly uncovers recurrent reliance on verbal decisions, more particularly in abrupt scenarios or routine internal directives. The study tremendously asserts that unwritten decisions retain legal validity once they effectively fulfill core substantive conditions: competence of the issuing authority, legitimate purpose, lawful cause, and alignment with public interest. The "shape" of such choices is undoubtedly formally oral expression instead of documentation. Nonetheless, the non-existence of written records sophisticatedly complicates proof in judicial disputes and effectively weakens guarantees of legality, Critical risks include eroded transparency, vulnerability to misuse of discretionary powers, and compromised individual rights, particularly in public employment or punitive measures. The research ultimately sums up that while unwritten decisions are legally permissible under traditional administrative law theory, they undermine judicial review and accountability. It recommends:
1. Legislative reform mandating written documentation for rights-affecting decisions.
2. Procedural safeguards requiring ex-post written recording of verbal directives.
3. Judicial flexibility in admitting diverse evidence to prove unwritten acts.

Keywords: unwritten administrative decisions, verbal decisions, administrative legality, judicial review, proof of administrative acts, comparative administrative law.

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1. Introduction

Legitimacy of administrative decisions is the cornerstone of creating a state of law. This requires that decisions must be taken by a suitable authority, according to provisions in place, and within the limit of reaching the public interest, Verbal (unwritten) administrative decisions are a challenging legal problem, contrary to the settled rules guiding administrative decisions. While written forms are the dominant first-line tool for the expression of the administration's binding will, due to their clarity, verifiability, and reviewability, they are such that there is practical experience to the effect that administrative authorities are frequently determined to issue oral decisions [1]. This is commonly attributed to the necessity of speed and executive flexibility or on attempting to avoid procedural complexities, particularly in areas such as public employment or direct contact with public facility users. This style of decision-making raises fundamental questions: Do these oral decisions acquire legal validity? And to what extent do they carry the same status as written administrative decisions in courts?, Can they be set up in case of a lawsuit? Their use also raises risks related to individual rights and guarantees, and

poses difficulties in exercising effective judicial oversight, especially given the clear legislative or regulatory vacuum in many legal systems regarding the regulation of their provisions and effects [2]. Although these decisions remain mostly limited to individual decisions and are usually excluded from application to formal and fixed regulatory decisions, their legal and practical effects remain the subject of ongoing jurisprudential and judicial debate.

Based on this central problem, this research aims to analyze the legal framework of oral administrative decisions and reveal the extent of their legitimacy in light of the principle of legitimacy itself , It also seeks to examine the possibility of proving these decisions, the methods of appealing them, and their legal validity before the administrative judiciary, by examining the positions of jurisprudence and the judiciary Ultimately, the research aims to assess whether oral forms can constitute an acceptable or sufficient alternative to written forms in expressing binding administrative will, especially in light of contemporary requirements for transparency and effective judicial oversight [3].

The importance of this research lies in filling a knowledge gap regarding a comprehensive legal treatment of the phenomenon of oral administrative decisions and shedding light on the legislative and regulatory gaps surrounding them, It also highlights the practical risks associated with their use without adequate controls, which may infringe upon individual rights and undermine the guarantees of defense and appeal, It also provides a critical analysis of the divergent jurisprudential and judicial positions on them, seeking to develop a clearer and more consistent understanding [4].

The research adopts an integrated methodology that combines a theoretical analysis of basic concepts (such as administrative decisions, legitimacy, and formality) with an analytical approach to legal texts related to the principle of legitimacy and forms of administrative expression [5]. It also relies on an induction and analysis of the opinions of jurists and judicial rulings in addressing cases of oral decisions and the disputes arising from them.

The scope of the study is limited to analyzing the legitimacy of individual oral administrative decisions from an administrative law perspective, focusing on the conditions for their legal validity, the possibilities of proof, the means of appeal, and their legal value (conclusiveness) before the judiciary [6], Regulatory decisions will generally be excluded (unless an exceptional note is provided) and decisions issued by bodies of a purely political nature.

The Nature of Unwritten Administrative Decisions

Definition of Unwritten Administrative Decisions

Iraqi legislation does not explicitly define administrative decisions in general, nor unwritten administrative decisions in particular—a situation mirrored in French and Egyptian legislation, which also lack precise definitions of this term. This is attributed to the legislative approach, which often avoids defining flexible legal concepts that are difficult to encapsulate comprehensively [7], [8]. This hesitation stems from the difficulty of anticipating all future practical applications of these concepts, given the temporal and spatial gap between legislative authority and the evolving reality of administrative practice, as well as the dynamic nature of legal sciences themselves.

In the absence of explicit legislative definitions, both judicial and doctrinal administrative law have undertaken the task of elucidating the concept and identifying its essential characteristics [9].

In French administrative jurisprudence, an administrative decision is considered "any act issued by an administrative authority or a private body participating in the exercise of administrative functions, involving the use of public authority, i.e., decision-making power

In Egyptian jurisprudence, the Supreme Administrative Court of the State Council defined an administrative decision as:

"The administration's expression of its binding will, in the form required by law, using the authority granted to it by laws and regulations, with the aim of producing a specific legal effect, provided it is legally possible and permissible, and motivated by the pursuit of public interest."

In Iraq, the Administrative Judiciary Court defined it as: "A legal act issued by an administrative body, producing an effect on legal positions."

In French doctrine, the jurist Hauriou defined an administrative decision as:

"Any declaration of will issued by a central or decentralized administrative authority, intending to produce a legal effect on individuals, in an executive form that leads to the immediate implementation of that will."

In Arab administrative doctrine, particularly in Egypt and Iraq, several jurists have offered similar definitions of administrative decisions, albeit with differing phrasing [10]. Dr. Mustafa Abu Zaid Fahmy defined an administrative decision as:

"A legal act issued by the administration through its unilateral will, intending to modify existing legal positions, whether in rights or obligations."

Dr. Shab Toma Mansour defined it as:

"A legal act issued unilaterally by the administrative authority, producing a legal effect."

Similarly, a segment of Iraqi doctrine adopted a closely related definition, describing an administrative decision as:

"A legal act issued unilaterally and bindingly by one of the state's administrative bodies, intending to alter legal positions, whether by creating a general or individual legal position, modifying an existing one, or abolishing it."

A review of these judicial and doctrinal definitions reveals that—despite differences in phrasing and style—they agree in substance, affirming that an administrative decision is a legal act issued unilaterally by an administrative body, aiming to produce a legal effect on existing or newly established legal positions [11], [12].

Regarding unwritten administrative decisions, it is evident that doctrine and jurisprudence have not provided a precise or independent definition, unlike some other unwritten administrative decisions, such as negative or implicit decisions, which have received broader doctrinal and judicial attention. It appears that general definitions of administrative decisions extend to unwritten decisions, as they fall within the general framework of administrative decisions, albeit distinguished by formal characteristics that make them—superficially—seem exceptional, suggesting a departure from the traditional theory of administrative decisions [13].

Most doctrinal and judicial definitions are phrased generally, not tied to a requirement of writing or a specific form, allowing their application to various types of decisions, whether explicit and written or unwritten, as long as their legal essence exists [14]. The essence lies not in the form of the decision but in its legal content, as an administrative decision is fundamentally a legal act that does not require a specific form for its validity. It suffices that it is issued by a competent administrative body with binding will, producing a legal effect.

As for the focus of doctrine and jurisprudence on negative and implicit decisions over unwritten ones, this is attributed to the former being presumed by law rather than inherently real, necessitating legislative and judicial intervention to frame them and define the conditions for their realization. Unwritten decisions, though less discussed, are inherently real but lack official means of proof, reducing their prominence in doctrinal and judicial debates.

An unwritten administrative decision may be defined as:

A legal act issued unilaterally by a competent administrative body in an unwritten verbal form, intending to produce a specific legal effect on an existing or newly established legal position, provided it is legally permissible, issued for a legitimate reason, and aimed at achieving public interest.

This definition combines the general characteristics of administrative decisions with the formal specificity of unwritten decisions, emphasizing elements of competence, will, legal effect, and legality.

2. Materials and Methods

2.1 Elements of Unwritten Administrative Decisions

The elements of unwritten administrative decisions do not fundamentally differ from those of written or explicit administrative decisions, as they are subject to the same legal requirements in terms of structure and composition, differing only in the mode of expression.

As is known, an administrative decision is based on five fundamental elements:

1. Jurisdiction (Competence): The authority of the issuing body.
2. Form: The external manifestation of the decision.
3. Subject Matter (Objet): The content or substance of the decision.
4. Cause (Motif): The legal and factual basis for the decision.
5. Purpose (But): The public interest objective.

The form of an administrative decision, in general, is the external appearance through which the administrative body expresses its will. It materializes through the procedures and means used to issue the decision, serving as the "external shell" that contains the decision's substance and brings it into legal existence. In other words, form is the "external garment" worn by the decision when the administration discloses its binding will, constituting an integral part of its legal identity.

Based on this, the form of an unwritten administrative decision lies in the spoken word, utterance, or verbal expression through which the decision is issued, using the state's official language or any verbal means characterized by seriousness and clarity. The decision may take the form of an order, prohibition, grant, or denial, depending on the administrative context and discretionary authority, without requiring a specific phrasing, as long as it is issued within the framework of the official language or a socially acceptable dialect that does not conflict with legal understanding.

It is noteworthy that an unwritten administrative decision, despite its formal simplicity, may be preceded by procedural or substantive formalities that affect its legal validity, much like written decisions. However, the external physical form—a hallmark of written decisions—is absent in unwritten decisions due to their mode of expression, raising challenges related to proof and documentation when contested.

3. Results and Discussion

The Legal Nature of Unwritten Administrative Decisions and Their Challengeability

3.1 Legal Nature of Unwritten Administrative Decisions

Statements issued by administrative bodies remain mere words without legal value unless they produce an effect on a legal position, whether by modifying, abolishing, or creating a new legal position. An unwritten administrative decision cannot be considered a legally effective decision unless it fulfills both the formal and substantive aspects; otherwise, it is merely a verbal expression without legal consequence.

For an administrative decision to produce a legal effect, certain general legal conditions must be met, defining the scope of this effect. The default position is that an administrative decision—whether written (with broad applicability) or unwritten (with

limited scope)—produces a legal effect. Key conditions for unwritten administrative decisions include:

1. Non-violation of explicit legal texts requiring written decisions.
2. Consistency with established administrative customs favoring written decisions.
3. Appropriateness of verbal expression to the subject matter of the decision.

These conditions are necessary to ensure the legal effect of administrative decisions and must be met for legal recognition. Unwritten administrative decisions share certain similarities with their written counterparts while differing in others. Both are subject to the same essential requirements for the elements of a decision (cause, purpose, subject matter, issuing authority, and competence). However, the core difference undoubtedly embeds in form: spoken choices are normally made orally without documenting, and this undoubtedly raises reservations due to risks of misinterpretation, distortion, or misapplication in the absence of written evidence [15].

Legality of oral decisions is validated according to the legal framework under which the administration works. Where they are permitted and recognized as having both legal and administrative weight, they are valid. In other systems where they are not validated, oral decisions have no more than the status of administrative instructions or directives to ensure continuity of public service and do not attain the full legal binding force of written decisions. Some oral instructions are issued in public service as isolated orders of administrative superiors with the intention of explaining procedures or responding to exigent developments [16], [17]. The legality of such orders is subject to the law governing the administrative agency and the scope of competence vested in its head. Therefore, they are short of the nature of a complete administrative decree, particularly when individual statutory provisions regulate the matter.

For example, where the statute requires that financial transactions be made within specified amounts and with written documentation, a verbal order within such a context does not have legislative basis and cannot be seen as an acceptable administrative decision. Conversely, the system can validate the head of an administrative body – in cases of urgent need – to issue binding oral decisions with specific legal consequences, even if formulated as instructions or indications. Such as a traffic police officer's decision not to allow through or to allow through: a decision immediately enforceable though verbal or tacit. Worthy of mention is that some administrative seniors verbally instruct subordinates to perform jobs for personal gain, in a bid to shun legal accountability. Besides, conflict between regulatory limits and personal wants can push some workers to utilize this approach. These rules can be implemented under coercive pressures like transfer or withholding of employment rights. For instance: Orally instructing an accounting personnel to disburse bonuses above approved levels in the interest of discretionary powers or public interest [18].

This practice favors corruption and does not facilitate administrative reform since powers are exercised illegally, contrary to their original purpose, and rights are lost. It should be noted that verbal directives were originally intended to facilitate administrative workflow and address exceptional or urgent situations not amenable to routine procedures, aligning with the principle of public service continuity and regularity.

3.2 Challenging Unwritten Administrative Decisions

Challenges against unwritten administrative decisions should be directed to the issuing authority, provided it has independent legal personality. If it lacks such personality, the challenge must be submitted to the higher authority to which it is organizationally subordinate, as determined by law.

A reader might ask: Do the Administrative Judiciary Court and the Civil Service Court accept petitions challenging unwritten administrative decisions, even if they lack evidentiary documents such as a decision number or proof of issuance?

Current judicial practice accepts petitions even if they lack supporting documents, including the contested administrative decision, provided the plaintiff details the decision’s content and issuance date in the petition. The administrative judge, exercising

proactive procedural authority, may compel the administration (the defendant) to submit a copy of the contested decision along with all relevant administrative documents.

The deadline for filing a cancellation lawsuit before the Administrative Judiciary Court is sixty days, starting from the expiration of the thirty-day period allotted for the administrative appeal to be resolved by the competent administrative body.

Regarding cases within the jurisdiction of the Civil Service Court, the legislator distinguishes between two types based on the mandatory nature of administrative appeals:

3.2.1 Mandatory Appeal Cases

The legislator requires an administrative appeal as a precondition for litigation, barring judicial recourse before exhausting this step. These are termed "penalty cases" in administrative jurisprudence and include challenges to disciplinary penalties under Article 8 of the State and Public Sector Employees Discipline Law No. 14 of 1991, as amended :

- The deadline for judicial appeal is thirty days from the administration's rejection of the appeal (explicit or implicit).
- The appeal must be filed within thirty days of the employee's notification of the disciplinary penalty and decided within thirty days of submission.
- This type is known as the mandatory administrative appeal and falls outside this study's scope, as it requires a written administrative decision.

3.2.2 Non-Mandatory Appeal Cases

The legislator does not require a prior administrative appeal, allowing employees to directly petition the Civil Service Court without first exhausting administrative appeal procedures. This category includes challenges to non-disciplinary administrative decisions, such as promotions, allowances, transfers, retirement referrals, or termination.

- These cases offer flexibility, enabling employees to seek judicial redress immediately if their rights or employment status are affected, without preliminary administrative appeals.

In light of the above, it is evident that the Iraqi legislator has not overlooked the legal challenges posed by unwritten administrative decisions. Administrative courts are granted broad discretionary powers to verify the existence of such decisions, even in the absence of written documentation. Judicial practice accepts challenges if the administrative decision's substantive elements (subject matter, content, and legal effect) are present, irrespective of form ,This is affirmed by the Supreme Administrative Court in Decision No. 15/Administrative/Appeal/2014:

- An employee was referred to retirement by an administrative order and later reinstated without a written cancellation decision. The court ruled that reinstatement constituted an unwritten administrative decision producing legal effects and ordered the administration to pay salaries for the interim period.
- Similarly, Decision No. 137/2014 Citizens challenged their inclusion in asset-freeze lists without written administrative decisions. The court held that inclusion without legal written basis was unlawful and annulled the measures.
- Conversely, Civil Service Court Decision No. 247/Civil Service/Appeal/2017 An employee challenged a verbal decision with no direct legal effect. The court ruled that such decisions are not challengeable administrative acts.

Thus, explicit decisions—whether written or unwritten—are subject to the same statutory deadlines for challenges and the same legal framework, without distinction in effects or procedures. This aligns with the general principles of legality and ensures judicial oversight of administrative actions, safeguarding individual rights and upholding the rule of law.

4. Conclusion

The preceding analysis demonstrates that an administrative decision does not lose its legal character merely because it is not in written form, provided it fulfills its fundamental elements: competence, form, cause, subject matter, and purpose, and produces a legal effect on an individual's or group's legal position. A verbal decision, if proven to have been issued by a competent administrative body and intended to produce a legal effect, constitutes a complete administrative decision subject to judicial review and challenge within statutory time limits.

Administrative jurisprudence has consistently held that writing is not a prerequisite for the validity of an administrative decision but rather a means of proof. Courts may infer the existence of unwritten decisions from surrounding facts, circumstances, and implementation, underscoring the pragmatic nature of administrative adjudication in balancing individual rights protection with public service continuity.

However, spoken decisions may undoubtedly threaten legality and noticeably weaken legal safeguards for individuals. Administrative courts could undoubtedly and fairly face challenges in meticulously verifying their existence and content, particularly when they strikingly affect fundamental rights like public employment or administrative penalties.

Recommendations:

1. Legislative Mandate for Written Documentation: Enact legislation providing mandatory written form for material administrative decisions, particularly those involving legal rights or obligations.
2. Formal Recording of Non-Written Directives: Formalize procedures compelling administrative authorities to record in writing oral or implicit directives within stipulated time frames to enable accountability and judicial reviewability.
3. Durable Standards of Admissibility in Administrative Tribunals: Expand evidentiary procedures in administrative tribunals to include diverse methods of proof for establishing the existence and content of non-documentary decisions in cases where direct written evidence is not available.
4. Cultural Change towards Documentation: Implement across-the-board training programs to introduce documentation sensitization among public functionaries, emphasizing the juristic need and functional utility of formal rules of record-keeping.
5. Imposing Strong Overseeing Mechanisms for Discretionary Decisions: Strengthen mechanisms of judicial review to rigorously review the issuance and application of non-written discretionary decisions, thereby preventing potential abuse of power.

Summing it all up, promoting transparency and papering of administrative decisions is still the foundation of rights protection, ensuring compliance by administrations with the law and achieving administrative justice.

REFERENCES

[1] Z. A. K. A. Hussein, Certain Knowledge in the Administrative Decision, M.A. thesis, College of Law, Univ. of Babylon, 2019, p. 77.

[2] K. Haikal, Appealing the American Administrative Decision and the Judge's Authority in Hearing the Case: A Comparative Study, Cairo: Dar Al-Nahda Al-Arabia, 2007, p. 12.

[3] A. A. H. Abdullah, Immunization of the Administrative Decision Against Annulment: A Comparative Study, M.A. thesis, College of Law, Al-Mustansiriya Univ., 2014, p. 14.

[4] M. A. H. Al-Dulaimi, Transformation of the Administrative Decision, 1st ed., Amman: Scientific Publishing and Distribution House, 2001, p. 57.

[5] S. Y. Khater, The Administrative Decision: A Comparative Study, 2nd ed., Cairo: Dar Al-Nahda Al-Arabia, 2008–2009, p. 8.

[6] S. N. Al-Dulaimi, Procedural Pleas before the Iraqi Judiciary: A Comparative Study, Baghdad: Al-Sanhouri Library, 2010, p. 50.
[7] A. M. Badir, I. A. W. Al-Barzanji, and M. Y. Al-Salami, Principles and Provisions of Administrative Law, Cairo: Al-Atak for Book Production, 2011, p. 415.
[8] F. S. A. Al-Suhail, Oral Administrative Decisions, M.A. thesis, Faculty of Law, Alexandria Univ., 2016–2017, p. 77.
[9] B. J. Yahya, "The Specificity of Form in the Administrative Decision," J. Univ. of Babylon for Humanities, vol. 28, no. 5, p. 29, 2020.
[10] Iraqi Official Languages Law No. 7 of 2014, Article (1/Second), Iraqi Gazette, no. 4311, Feb. 24, 2014.
[11] M. M. Hafez, The Administrative Decision: A Comparative Study, Cairo: Dar Al-Nahda Al-Arabia, 1992, p. 15.
[12] A. S. Sawadi, The Procedural Role of the Administrative Judge, M.A. thesis, College of Law, Univ. of Maysan, 2022, p. 59.
[13] State Council Law No. 65 of 1979 (Amended), Article (7/Seventh/A–B).
[14] Cassation Decision No. 83/Discipline/Appeal/2004, June 7, 2004, Collection of Decisions and Fatwas of the State Shura Council, 2004–2006, p. 257.
[15] State Council Law No. 65 of 1979 (Amended), Article (7/Ninth/B).
[16] Supreme Administrative Court Decision, [Online]. Available: https://www.moj.gov.iq/view.1922/, accessed May 27, 2025.
[17] Supreme Administrative Court Decision, [Online]. Available: https://www.moj.gov.iq/view.1786/, accessed May 27, 2025.
[18] Collection of Decisions and Fatwas of the Iraqi State Council, 2019 ed.