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Silent electronic rejection : Legal adaptation and guarantees for the injured party - a comparative study between the French and Algerian models

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Abstract

The problem of silent electronic rejection as a new phenomenon has overturned the hypothesis on which the traditional theory of implicit administrative decision was built, as it assumed that the administration “heard” the request and then “decided” to remain silent about it, while digitalization creates situations in which the request was not heard at all, or the response came from the system’s engineering rather than from a declared administrative will, or automatically, devoid of both reasoning and legal reason. Hence, silence is no longer a single type, but rather four types that require different adaptations: the implicit digital rejection, which is sufficient for the classical theory and its evidentiary link, the explicit automatic rejection, which is considered a fully competent administrative decision, obligatorily justified and subject to the guarantee of human intervention, the refusal by design, which adapts a general measure with individual effects that is subject to appeal, and the technical silence, which has no decision at all, but rather a collateral error and compensatory liability. The automated decision is assigned to the administration operating the system as its legal author. It is not permissible to claim the system’s error as an exempt defense, nor to refer the injured party to the private contractor. The preventive guarantees are based on communicating the electronic deposit as a condition for the legitimacy of the channel itself, on reversing the effect of silence into “categorical and accepting silence,” and on the obligation of explanation and maintaining a parallel human channel. Procedural guarantees include prior administrative appeal, cancellation claim, and urgent judgment, including the order to disclose. As for guarantees of proof, they are based on the two presumptions of the existence of the request and the monopoly of evidence, with a role for judicial expertise in examining technical records. Compensatory liability is based on Article 124 of the Algerian Civil Code and Blanco’s jurisprudence in French law, and compensates for the loss of serious opportunity and the loss of applications. On a comparative level, the French model presents a relatively integrated system that combines a general rule for implicit rejection, a reversed exception with categorical and accepted silence, the duty of connection and reasoning, and a prior framework that produces arguments, while the Algerian model - especially after Law 23-12 - provides a promising legislative basis, but its real vacuum is procedural and evidential, not theoretical. The overarching recommendation is to generalize the signed receipt as a condition for the legitimacy of every channel, adopt the rule of “no automatic decision without a prior announced explanation,” and generalize categorical and accepting silence with the right to obtain a certificate of acceptance and acknowledge the aforementioned evidence, so that digital silence turns from a grave in which requests are buried to a scale on which the administration is obligated to make a good statement.

Keywords: silent electronic rejection; implicit administrative decision; Conclusive, accepting silence; automated decision; reasoning; Guarantees for the injured person; digital proof; Management responsibility

Introduction

Administrative silence is an ancient phenomenon that the administrative judiciary has known since its inception, and has surrounded it with a coherent theoretical arsenal: the implicit decision to reject, the start of the appeal deadlines, and the conditions for a serious request. However, this entire arsenal was built on one explicit assumption: that the administration “heard” the request and then “decided” to remain silent about it. Digitization has upended this hypothesis from its foundations: the request may not have been heard at all (it was swallowed by the system when sending it without notice), the response may have been issued by “system engineering” and not by a declared administrative will (a model that does not contain the applicant’s status at all), and the response may be automatic and clear, devoid of justification and legal reasoning together. Hence, silence is no longer a single category for which classical theory is sufficient, but rather multiple silences that require distinct adaptations.

The issue gains its importance from its location at the meeting point of three transformations: the generalization of the digital channel in the first place for communication with the administration (1), And restructuring the theory of administrative decision in

the face of automated decisions, and the crisis of digital proof that makes the injured person unable to prove a fact that is at the heart of proving his right. The central problem is crystallized in the following question: How is silent electronic rejection adapted in the French and Algerian models? Is the existing arsenal (an implicit decision and appeal procedures) sufficient to protect an aggrieved person who finds himself faced with “double silence”: an administration that does not respond, and evidence that is not proven? What are the guarantees to fill this void?

In accordance with the applied comparative analytical approach, we divide the research into two sections: in the first, we address the legal adaptation of silent electronic rejection in its theory, patterns, and attribution, and in the second, we address the guarantees for the injured party: preventive, procedural, and judicial, and guarantees of proof and liability.

The first topic: the legal adaptation of silent electronic rejection

The first requirement: The general theory of the implicit decision to reject in comparative law

The first section: The theoretical construction in the French model

The French administration was not legally obligated to respond to every request, but to protect his right to appeal, the petitioner needed a presumption that opened the door to the judiciary, so jurisprudence created the “implicit decision of rejection” that was generated by the expiry of a reasonable period without a response, provided that the request was serious and not frivolous, submitted to the competent authority, and fulfilled the imposed legal form(2). This judicial structure became a legislative text in accordance with Article 23 of the Law of April 12, 2000, which stipulated that the administration’s silence within two months of receiving the request is considered a decision of rejection(3)، Before the rule settled in the current code of relations between the public and the administration (4). The order of this is clear: the implicit refusal is treated like an explicit decision in its essence, its ability to be appealed, and the deadlines for it, so the petitioner remains a claimant, even if the petitioner does not utter a word.

Section II: Consecration in the Algerian model

The judiciary of the Algerian State Council defined the implicit decision of rejection before it was stipulated in any general legislation, and linked its implementation to the same conditions established in comparative jurisprudence: that the request be legitimate and serious - does not reveal the administration’s abdication of its jurisdiction or a clear violation of the law - and that it be submitted to the legally competent authority**(5)**. However, Algeria remained without a unified general text for the deadline that was rejected by silence until the issuance of Law 12-23 of 2023, which set deadlines for deciding on applications, while special deadlines remained contained in various texts (such as a tax dispute)**6)**. As for the appeal rule, it is established in the Civil and Administrative Procedures Code, which sets the deadline for filing a cancellation lawsuit to four months from publication or notification, and from the date of the implicit rejection**(7).**

The third section: The impact of digitization in overturning the theoretical hypothesis

The classical theory assumes a certainty prior to silence: the certainty of the arrival of the request (a deposited document, a receipt). Digitization has shattered this certainty: the request may perish in the technical space with no significant effect, so the “silence” here becomes a technical silence, not an administrative one: the administration did not issue an implicit decision to reject because the request legally was not established in the first place, and no deadline has begun because there is no decision to complain about and no evidence to proceed from. Thus, digitization reveals that the traditional theory was actually protecting one type of the silent: the one whose request was heard and remained silent, and remains incapable of a more dangerous type: the one who was “swallowed by the regime” and neither heard nor remained silent. This distinction between administrative silence that can be implicitly rejected, and technical silence that does not produce a decision at all, is the key to this entire study, and from it emerge the four patterns that we present in the next section.

The second requirement: Patterns of silent electronic rejection and their sub-adaptation

We see that the essence of silent electronic rejection is organized into four patterns that require different legal adaptations that may not be molded into a single template.

The first type: implicit digital rejection: which is the clean image: a request was submitted via the electronic channel and actually arrived (its owner received a documented notification), then the administration remained silent. The conditioning here is classic without the need for any modification: the implicit decision to reject arises upon the expiration of the deadline, and a lawsuit for cancellation is opened. Only one aspect poses a problem: proving the filing date from which the term begins, and its solution is within the reach of the legislator: a dated and signed electronic receipt notice. The French legislator did well to require, by decree of June 6, 2001, the delivery of a receipt containing the registration number, the postponement of the reversal of silence, and methods of appeal(8)، While the Algerian Law 15-04 provides the technical tool to confirm that electronic signature and authentication are authoritative (9)، Although the obligation to hand over the receipt remained less explicit in the Algerian system before Law 23-12.

The second type: explicit automatic rejection: Here there is no silence at all, but rather an automatic response: “Your request is rejected,” or “Your data does not match,” or a silent cessation of processing at the “moment of decision” without informing. The correct adaptation, in our opinion, is that the system’s message is an explicit administrative decision, regardless of its technical source, and that it is subject to all the general obligations of the decision: reasoning, notification of methods of appeal, and the possibility of cancellation. In France, these obligations appear in the text: Explanation of refusal decisions addressed to natural

persons under the law of April 12, 2000[10]، The Code stipulates that certain categories of decisions must be explained [11]. As for the European Convention on Data Protection, Article 22 of the General Data Protection Regulation stipulates the right of every person not to be subject to a decision based solely on automated processing that produces legal effects against him, and requires the right to human intervention, expression of opinion and objection[12]. In this regard, Algeria is experiencing a clear legislative vacuum: Law 18-07 does not include an explicit counterpart to this article, and therefore the Algerian annulment judge must fill the vacuum through a simple rule: The unexplained automated decision is a defective decision, and the absence of justification is an apparent error that justifies the annulment, as digitization does not change the nature of the decision and guarantees are not voided with it.

The third type: Rejection by design: This is the most insidious pattern and the furthest from the traditional theory: a system that does not allow the application to be submitted at all in the case of the applicant (a mandatory field that does not apply to his case, no option to cover his situation, a single electronic payment that he is unable to do, a single language that he does not understand). There is no individual decision here in the strict sense, but rather a decision implicit in engineering: the administration rejected the entire category before any individual request was generated. The adaptation that we see as correct is to treat the design as a general measure with individual effects that is subject to appeal, because it is issued by an administrative will (choosing the structure and conditions) and has legal effects on a specific, identifiable group. This adaptation supports the logic of equality before the public facility: rejection by design is a structural deprivation that the administration does not intentionally differentiate between individuals, but rather is completely forbidden by engineering without a word. In the French model, this adaptation finds fertile ground in the well-known flexibility of the jurisprudence of appealable decisions, while in Algeria it requires interpretive jurisprudence that expands the oversight of the annulment judge to “engineering decisions,” which is a legitimate expansion because it does not create a new obligation as much as it transforms an existing obligation (equality, continuity) into actual oversight.

The fourth pattern: technical silence: which is the harsh hypothesis: the request was swallowed upon transmission (crash, interruption, incomplete processing) without notification to its owner. The law here is harsh in its frankness: the request is not legally established, so there is no implicit decision created and no deadline begins, and its owner remains without a claim for cancellation at all because there is no decision to be canceled and no evidence is likely because there is no receipt in his hand. It is precisely this pattern that reveals that protecting the injured person does not pass through the decision theory at all, but rather through the theory of proof and responsibility: the administration’s commitment to confirm receipt, evidence that works in the user’s favor, and compensatory responsibility for “loss of orders,” which we present in the second section.

It is noted that Law No. 18-07 of June 10, 2018 relating to the protection of natural persons in the field of processing of personal data does not contain an explicit counterpart to this article.

The third requirement: Attributing the automatic rejection to the administration and the limits of its appealability

The first section: The machine does not decide: the theory of attribution

It may be said that the regime’s message is “the regime’s decision” and not the administration’s decision, and the explanation is invalid due to the lack of will. In our opinion, the response does not require a new theory: the information system is a tool in the hands of the administration, like a pen and a seal, and what is issued through it is assigned to the authority operating it as its legal author[13]. These are two practical reasons: The first is that the administration may not claim a technical error as an exempt defense, because the defect of its system is a utility error; The second is that it is not permissible to refer the user to the private contractor who developed the system, as responsibility towards the user rests on the administration alone, and the latter reserves recourse to its contractor within the scope of the contract.

The second section: Attributing the decision does not solve the problem of reasoning

The question of “who decides” is solved by attribution theory, but the problem of “how to explain” remains. The automated decision is often explained by a general phrase (“according to the legal conditions”) that does not amount to a real legal explanation. We believe that the solution is prior explanation by the algorithm: if the rules of automatic rejection are announced and predetermined (for example: “The application is automatically rejected if condition A or B is met”), the automated decision suffices by referring to these announced rules, provided that the algorithm remains subject to judicial examination. As for secret algorithms or those that are justified using a constructive phrase, their decisions are not reasoned, and the absence of reasoning in them is an apparent error that disqualifies them, which is what the Algerian abolitionist court settled on in traditional decisions by describing reasoning as an essential condition(14).

Section Three: The condition of serious demand in the digital environment

Classical theory states that silence does not constitute an implicit decision unless the request is “serious and legitimate.” This fundamentally rational rule may turn into a trap in the digital environment: what happens is that the application is not completed digitally (an error in filling out, the loss of an attached document due to a technical defect), so the administration claims that the application is “not serious,” and the implicit decision is dropped in the first place, and the affected person finds himself without a decision, a deadline, or a lawsuit. Therefore, we see the adoption of a lenient reading of seriousness in the digital environment: the appearance of seriousness upon sending is sufficient (a temporary notification of receipt, i.e. evidence of an attempt to present seriousness), and a technical defect attributed to the system may not lead to dropping a request that was serious in its intention and content. Seriousness is a measure that makes a request reasonable, not

a technical excuse for executing requests.

The second topic: Guarantees for the injured party in the face of silent electronic rejection

The first requirement: Preventive guarantees (pre-conflict guarantees)

Section One: Notice of receipt is the cornerstone

There is no guarantee equal in effectiveness and ease to the electronic filing receipt: it specifies the date of the request, from which the implicit rejection period begins, and with it the aggrieved party proves the existence of the request in the face of "technical silence." The rule that we believe deserves to be raised to the rank of principle: There is no digital channel without a digital connection. That is, delivering the notice is a legal condition for the channel itself, not an administrative courtesy. The French legislator has achieved this text since 2001 [(15)]. While the Algerian system points in the same direction through Law 23-12 in its filing and decision rules (16), the gap remains in practical implementation: a portal that does not provide a link is, frankly, an administration that produces responsibility without evidence.

The second section: Decisive and accepting silence turns the balance of danger

The most logical guarantee is to reverse the effect of silence: instead of punishing the aggrieved person by the administration's silence, the administration is punished by its silence, so the silence after the expiry of the term is implicitly transformed into acceptance. The French legislator took this step following the Digital Republic Law of 2016 and the decree issued on December 5, 2016, which specified lists of procedures in which silence generates acceptance (17), while Algerian Law 23-12 took this direction in specific cases as it arranged (18). The advantage of this rule is that it turns silence from a source of harm into a source of right, and pushes the administration internally to discipline for fear of the emergence of rights under the force of law. Its limitations are known: it is not suitable for procedures of a discretionary nature, and it raises a practical problem, which is "acceptance that is not proven," which requires affirming the right of the aggrieved party to obtain from the administration a document proving the occurrence of implicit acceptance, otherwise he acquires a right that he cannot present in the face of others.

Section Three: Reasoning and alternatives to the channel

The justification is the legal translation of respect for the aggrieved party: a decision of rejection without justification, a rejection for which no "reason" can be said. The obligation exists in both models, textually in France (19) and judicially in Algeria (20), and it is only required to carry it to the automated decisions, as mentioned above. As for the guarantee of alternatives to the channel, it is the complementary condition: digital facilitation may not turn into a digital obligation that besieges unskilled groups. A parallel human or paper channel must be maintained, otherwise rejection will occur according to the design presented in the second requirement of the first section.

The second requirement: procedural and judicial guarantees

Section One: Prior Administrative Appeal

The French legislator, in accordance with the Code of Relations between the Public and the Administration, applied the rule of mandatory prior administrative appeal in a range of disputes (21), and it has a double value in the digital context that cannot be overlooked: it gives the administration the opportunity to correct the failure of its system before the judiciary, and in the process produces correspondence and documents that later serve as evidence for the injured party. Algeria does not know this rule in its entirety, so prior complaints remain contained in various special laws. We propose, based on the French model, to teach advance appeals of electronic services through the same digital channel, with a golden rule: It is not permissible for a person complaining of a digital channel to be asked to complain about its defect via the same defective channel, so a parallel channel will always be left to him.

Section Two: Cancellation claim

In the face of the four established patterns, the existing ruler is theoretically sufficient for all patterns if left to work: the digital implicit rejection is canceled like any implicit decision; The automated message is an explicit decision that is irrevocably challenged and whose illegality is argued for lack of justification. Denial by design is attacked as a general measure; Technical silence alone has no claim for cancellation at all, because it is an assumption of responsibility, not decisions. The real practical knot in the first three types is determining the beginning of the deadlines and proving them: The Algerian four-month deadline (22) stems from the establishment of the implicit rejection or the notification of the explicit rejection. If the rejection is a message on a screen, the affected person must preserve what proves its date (a saved copy, a notarized postal notification, an administrative certificate of the case), and here the value of the electronic signature and Law 15-04 in documenting the notifications themselves emerges (23).

Section Three: Urgent action as a weapon against stagnation

It may be thought that urgency has no place in hypotheses of silence (cancellation is inherently slow), but this is an inaccurate assumption: the administrative urgency ruling as regulated by the Civil and Administrative Procedures Law (24) is valid in two of our research hypotheses: The first is the disclosure order: an order that requires the administration to disclose its decision or hand over a status certificate proving the fate of the request (accepted, rejected, or under study), and it is a direct tool to break

the double silence because it creates judicial evidence that the injured party cannot. He created it himself; The second is to stop the implementation of an explicit automatic rejection when there is urgency and the apparent seriousness of the request is proven, as if the automatic rejection threatens the loss of a right for a definitive deadline. The mediator or commissioner remains a useful parallel channel, as is the case in the French model.

The third requirement: guarantees of proof and compensatory liability

Section One: Redistribution of the burden of proof

The structural dilemma in every electronic dispute is that the administration monopolizes the evidence (system records, operating data), and the user emerges from the experience of silence without a document. The solution is not to beg the user to save screenshots, even if that is his duty, but rather to legally redistribute the burden: We first propose the presumption that the request was made when the user showed a temporary notification of receipt from the system (even if the processing was not completed), so the evidence turns around: the administration must prove that the request did not arrive or that it is not serious; Secondly, we suggest the presumption of failure to confront the administration when it refrains from presenting its records in the dispute, as refraining from presenting the monopolized evidence is a presumption of the validity of the opponent's claim, not of its fall. Judicial expertise still has a role in examining technical records, and it is regulated in the Civil and Administrative Procedures Law (25)

Section Two: Responsibility for technical silence and loss of applications

Technical silence is not the hypothesis of a decision, but rather the hypothesis of a pure utility error: the administration that opens a digital channel advances the pretext of "confirmed reception" to the public, and disrupting this reception (swallowing the request without a trace) is an error in the management of the facility that generates its responsibility according to Article 124 of the Algerian Civil Code (26) and applying the rules of administrative responsibility established by Blanco's jurisprudence in French law. The harm here is often the loss of a serious opportunity: a legal deadline that has passed due to the loss of a serious request, and the issue does not require a new theory, but rather the application of general rules in a digital spirit. French jurisprudence provides a valuable precedent in the Lahlou case in 2010, when the state was asked about its failure to establish an electronic system required by law.

Section Three: Protecting "implied acceptance" after it has arisen

If the silence created tacit consent (in proceedings subject to the rule of peremptory silence), the practical question is: What if the administration then expressly refuses or procrastinates in recognizing the right? The answer that the French judiciary settled on under the new regime, and what its Algerian counterpart should settle on, is that the right was complete with the expiration of the deadline, so any subsequent decision to refuse is an illegitimate decision because it was issued by an authority that stripped of its jurisdiction over the request (27), and generates full responsibility for the damage resulting from the retraction, including the damage resulting from not enabling the beneficiary to prove his right towards others. Thus, the construction is completed: The rule of "categorical and accepting silence" with no penalty for retreat has turned into a slogan without a guarantee, and the guarantee is not complete except with a certificate proving acceptance on the one hand, and with a deterrent compensatory liability on the other hand.

Conclusion

This research concludes that silent electronic rejection is not a single phenomenon, but rather four patterns with four adaptations: an implicit digital rejection that is sufficient for the classical theory and its evidential link; An explicit automatic rejection is a fully qualified administrative decision with binding justification and subject to the guarantee of human intervention. Rejection by design is a hidden public measure that deserves judicial oversight. A technical silence that does not involve a decision at all, but rather an accompanying error and compensatory liability. This result intersects with the second result: protecting the injured person in the digital environment does not pass through decision theory as much as it passes through proof theory: the right that is not proven as if it did not exist, and therefore the receipt of the deposit and not the resumption of theories is the first guarantee that should rise to the level of a legal condition for the digital channel itself.

As for the comparative level, the French model presents a relatively integrated system: a general rule for implicit rejection, an exception reflected in categorical and accepting silence, a commitment to connection and explanation, and a prior framework that produces arguments. While the Algerian model, especially after Law 23-12, provides a promising legislative basis, its real emptiness is not theoretical, but rather procedural and evidential: the absence of the generality of digital connectivity, the absence of a basis for automated decisions, and the absence of evidence that works in the user's favor. The comprehensive recommendation: generalizing the signed electronic receipt as a condition for the legitimacy of every channel, adopting the rule "no automatic decision without a prior announced explanation," generalizing categorical and acceptable silence in procedures with objective conditions with the right to obtain a certificate of acceptance, and approving the two presumptions of the establishment of the request and monopoly on the evidence. Thus, digital silence turns from a grave in which requests are buried, to a scale on which the administration is obligated to speak well.

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