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***Administrative Police between Achieving Public order and  
Restricting Public Freedoms***

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**Abstract**

*Administrative police tasks lie in organizing the social, political, and economic life of the individuals' public activity; through providing a set of measures and procedures that the administrative police authorities undertake; intending to preserve the local and even national public order together for fear of breaching it, neglecting it, and escaping it. However, while performing its tasks, it must take into account the equation of balance between protecting public order and ensuring public freedoms for individuals, because there is no public order without public freedoms, and no enjoyment of freedoms without public order.*

**Keywords:** *Administrative Police - Public Order - Public Freedoms.*

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## Résumé

*Les notions de l'ordre public et la liberté publique se comprennent mieux ensemble que séparément car ils sont liés, si on examine chaque une d'elle, il est nécessaire d'en cerner les contours. L'exercice des libertés publique est protégé par la police administrative tandis que l'ordre public est une mesures limite la liberté publique puisque le champ de ce précédemment cité est une notion définie d'une manière très large quoi que ses extensions ne peuvent pas être indéfinies, c'est pour cela ce dernier est visé par les mesures de police administrative sur tous les plans : social, politique, économique.*

**Mots clés** : police administrative – ordre public – liberté publique.

## Introduction

*Administrative police is one of the most important roles of the public authority characterized by the state through administrative bodies enjoying the privileges of public authority in order to maintain public order with its three meanings: public health, public tranquility, public security, in order to preserve the stability of the state. However, the actions taken by the latter may have a negative impact on the public freedoms urged by international and national conventions at the same time, which distinguishes the modern State from the fact that it controls it in accordance with legal regulations , in which it has established restrictions and controls on the administrative police activity, whether in normal or exceptional circumstances, where freedoms become threatened and more harmful than normal conditions, given the expansion of the administrative police authority by virtue of exceptional legitimacy. In this regard, the question arises about the ability of administrative police agencies to establish a balance between achieving public order and restricting public*

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*freedom? How does administrative police affect public freedoms? What are the guarantees to protect those freedoms? Most of these questions will be presented below through two key elements:*

***I-Establishing the idea of administrative police and its relationship to public order***

***II- Protecting public freedoms in the face of administrative police measures***

***I-Establishing the idea of administrative police and its relationship to public order***

*Administrative police is one of the most important forms of administrative activity taken by the Administration in order to organize its various activities through a range of measures and procedures to maintain public order and in return, it shall maintain public freedoms guaranteed in the Basic Law of the State. Thus, it is clear that there is an impact and effect relationship between public order and public freedom, so it should be first identified with the statement of its relationship with public order during the presentation.*

### ***1-What is administrative Police***

*In this part of this research, administrative police definition, qualities (characteristics) as well as types, will be presented, respectively.*

#### ***1-1- Definition of administrative police***

*Administrative police aims to maintain public order within society without compromising the public freedom enjoyed by the individual, so most of the legislation did not define the administrative police, but focused on its basic elements of public health, public tranquility and public security. The same is for the judiciary, and therefore the task has been entrusted to jurisprudence that is*

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*able to define it . From there, Maurice Horio defined it as all what it aims at maintaining public order in the State. It was also defined by Suleiman al-Tamawi as the right of the administration to impose restrictions on individuals limiting their freedoms in order to protect public order. Maar Aabadi defined it as all the legal, material and doctrinal actions, procedures and methods carried out by the competent administrative authorities in order to ensure that public order is maintained in a preventive manner within the legal system of rights and freedoms prevailing in the State(1).*

*All previous definitions have relied on organic and objective criteria(2) so that they have combined them by considering administrative police as the sum of organs and bodies - an organic standard - that ensure the preservation of public order - an objective criterion(3). Therefore, it is necessary to distinguish between administrative police and other legislative and judicial controls compared to public facilities.*

*Legislative police is the set of legislative actions issued by Parliament in accordance with the areas defined by the Basic Law, namely the Constitution, by the intervention of the legislator in issuing it, and its subject of which is to limit the scope of certain fundamental freedoms. For the administrative police is those administrative measures aimed at maintaining and protecting public order from breach. Judicial police is the actions taken by the judiciary to search, investigate crimes, collect evidence and inferences, and it can be said that both work to maintain public order, but the difference lies in the pattern of tasks (4). As for administrative police and public utilities, both constitute administrative activity, but the first is negative as it restricts freedoms and the second is positive that provides services to individuals (5).*

### **1-2- Administrative police Qualities (characteristics)**

*The characteristics of administrative police are a set of elements that contribute to distinguishing it from various other administrative activities and can therefore be limited to:*

#### **\* Solitary quality**

*The administrative authority is entrusted with the task of undertaking administrative police on its own, so that in order to maintain public order , and the individuals must submit and comply with it in accordance with the procedures imposed by the administration on them pursuant to the legal provisions and under the control of the judiciary.*

#### **\* Preventive quality**

*Administrative police is characterized by a preventive nature by pushing the risks from individuals, so Once the potential for damage or danger occurs, the administration must intervene through preventing, withdrawing or closing, by taking preventive measures against every danger that may affect the lives of individuals.*

#### **\* Discretionary quality**

*The administration has discretion power in its police activity, when it finds the possibility of harm or danger to individuals, it must intervene before it happens for the purpose of maintaining public order(6). The law therefore gave it discretion power because it had the ability to control the situation and choose appropriate means of intervention and make appropriate decisions in the situations and circumstances before it, due to impossibility to draw appropriate*

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*solutions in advance, that is why administration has discretion power, freedom to assess circumstances and adapt facts(7).*

### **1-3-Types of administrative police**

*It is known that the two types of administrative police are: general administrative police and special administrative police. The first means the sum of powers, measures and procedures taken in all fields to maintain public order from all disturbances that may occur, before their occurrence or reduce their exacerbation when when they occur. Thus, the broad meaning of administrative police is evident through the three elements of public order: public health, public tranquillity, public security, and public morals have been added and on this basis it is expressed by public sharia. The second, the special administrative police, means the set of the measures, powers and actions taken in a specific area and specifically relating to a group of persons or specific activities, such as the administration's imposition of measures to regulate movement and determine its timing(8).*

### **2- Administrative police authorities and means**

*Administrative police tasks are one of the most important functions because they seek to control public order and this is in accordance with the legal means granted.*

#### **2-1-Administrative police authorities**

*The function of administrative police is one of the most dangerous and harmful of the state functions because it is linked to the freedoms of individuals, for this law has made the task of administrative police in the hands of its*

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sponsoring authorities, which are distributed on two levels: the central level and the decentralized level.

**\* Administrative police authorities at the central level**

*Administrative police authorities are concentrated at the central level, i.e. national, by the President of the Republic, the Prime Minister, and the Ministers. The President of the Republic is considered responsible and the first man at the head of the executive power at the top of the pyramid of public administration, he has all the status and authority to make general and individual administrative decisions for the account and in the name of the state, as stipulated in article 91, paragraph 6 of the current Constitution (9), by saying: "... He takes over the regulatory authority...", and from it, it is discerned that everything that goes outside the legislative power is within the circle of regulatory authority, i.e. it belongs to the President of the Republic and is issued in the form of presidential decrees aimed mainly at maintaining public order, whether in ordinary or exceptional circumstances(10) .*

*As for the Prime Minister, the French administrative law jurists agreed to assign the task of administrative police to the Prime Minister, as indicated by the Constitutional Founder through article 112 paragraph 3: "He applies laws and regulations" and even the last paragraph of the same article by saying: "It ensures the proper functioning of public administration and public facilities".*

*As for the ministers, they do not have the authority to exercise the administrative police, but it is entrusted to the President of the Republic and the Prime Minister as a general principle. However, they are obligated to take measures and decisions that will preserve public order in the sector of their ministry, whereby every minister exercises the authority of administrative police*

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*of his ministry as a head of his administration with the exception of the Minister of Interior, who belongs to the national central administrative police bodies and authorities within the circuit of maintaining the public order.*

**\* Administrative police authorities at the local level**

*The local administration of the province and the municipality are moral persons managing their affairs at the local level, and these two organs are represented by the wali for the province (wilaya) and the head of the Municipal People's Council for the municipality.*

*The province is a regional community with a moral personality and financial independence and has social, economic and political competences, and it is a link between local and central administration, and the governor (Wali) is the supreme body in his mandate and a representative of the State at the local level, who oversees the maintenance of public order, safety and public tranquillity. He is also the first binding official to implement law and regulations, respect state's symbols and emblems on the territory of the state in which his jurisdiction is exercised (11). The governor also has the power to make solutions over the municipality in the event that the municipality fails to make the necessary decisions in accordance with specific measures (12).*

*The municipality is the basal regional community of the state with an independent moral character and financial disclosure, a means of communication between the citizen and the central administration. So, The president of the Municipal People's council has the power to control the general administration police of his municipality and to maintain public order, security, cleanliness and tranquillity.*

**2. Means of administrative police**



*In order for these authorities to carry out their duties, they must be provided with a range of legal means to achieve the desired objectives, which are limited to regulatory decisions, individual decisions, and forced execution. The first is also called control regulations, which are regulatory decisions issued by the executive authority to maintain public order in all its various elements and may also impose sanctions on violators. In this way, the control regulations may take several aspects, including licensing, prohibition, activity regulation and advance notification (13).*

*As for individual decisions, they are orders and prohibitions issued by the administrative police authorities for maintaining public order and they are applied to a particular individual or group of self-appointed citizens or concerning specific cases or facts. They are called police regulations, since they are based on pre-existing general administrative laws and decisions, and can be issued independently on condition that they do not violate them, and their issuance requires two conditions: firstly, a serious factual necessity of time and place, and secondly, that there should be no legislative provision prohibiting the issuance of independent individual orders and that the latter not be contrary to law and administrative regulations (14).*

*Thirdly, by forced implementation, the administrative police authority was granted the right to resort to material force on the basis of public authority privileges, from which the direct implementation authority allows it to use force to implement the application of its administrative police decisions in the event that individuals refrain and fail to submit to them. The use of the administrative police authority of the public force requires the following conditions:*

*\* This use should be to implement legitimate decisions*

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- \* *Prove that individuals have failed to implement administrative police procedures*
  - \* *The availability of urgency and necessity state so that it is not possible to obtain permission from the judiciary*
  - \* *The force used must fit the necessity that called for it<sup>(15)</sup>.*

## **II- Protecting public freedoms in the face of administrative police measures**

*Freedom is an important issue that individuals still strive to achieve it, and it is the issue of humanity as a whole, because it is a guaranteed advantage for all without discrimination, and thus it has taken an important place in most global and national legislation. However its practice is not absolute but restricted in order to avoid chaos and maintain public order. To show all these meanings, we will address what is public freedom and the extent of its confrontation against administrative police.*

### **1- Definition of public freedom, the relationship of administrative police to public freedoms**

*Freedom is of great importance in the life of the natural individual, it has been guaranteed and counted by various global, regional, and national legislation, but it has not been defined because freedom is a complex idea. John Locke defined it as the right to do anything permitted by the laws and also adds that everyone was born free. Mustafa Abu zeid also defined it as a set of legal means that allow an individual to lead his own life and contribute to the country's public freedoms<sup>(16)</sup>.*

*Based on the previous definitions, freedom is found to be close to a human being once he is on earth; it is not absolute, but restricted and relative, despite the multiplicity of ideas and definitions around it and the flexibility of the term, which has made it difficult to have an inclusive definition. Therefore, public order is the focus of symmetry between administrative police and public freedoms so that balance must be created between them, in which the public freedom should not be extended so that chaos does not prevail and administrative police may not be more restrictive than necessary so that tyranny does not prevail.*

*When talking about the relationship between administrative control and public freedom, the relationship between them should be highlighted through legal texts regulating freedom, led by the Constitution, as the highest law in the state, in which the constitutional founder recognized public freedoms in two manners, the first : the constitutional founder should state public freedoms absolutely without comment or condition and without explicitly referring them to other laws to regulate and restrict them, whether from a legislator or other administrative bodies as the administrative police authorities such as the freedom of belief. The second method : the constitutional founder states certain freedoms and in general without clarifying them and assigning detail and organization to the legislature.*

*As for the Algerian constitutional founder, he defined both methods in all Algerian constitutions to decide the subject of public freedoms, which gives them the constitutional status and is expressed by the constitutional protection of public freedoms as long as the constitution balances power and freedom<sup>(17)</sup>.*

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*And for the freedoms that have been referred to the legislature for detail, Parliament intervenes for its maintenance, provided that it adheres to the provisions of the constitution. The legislation is also considered to protect freedom because it enacts in any laws and procedures that prevent any abuse and thus freedoms are more guaranteed in the hands of the ordinary legislator.*

*In case that there is no legal provision regulating public freedoms, regulation varies depending on time and place, and the administrative police authorities expand to some extent compared to the situation in which legal provisions governing freedom are regulated. Therefore, the time conditions require administrative police to take more severe action in relation to the temporary regulation of freedom compared to those adopted in circumstances with a permanent regulation of freedom, in addition to the different procedures of the administrative police authorities over time so that the police authorities are more widespread at night than in the daytime and in the same place in exceptional circumstances - compared to normal circumstances - its powers expand at the expense of public freedoms even if it is necessary to deviate from the principle of legitimacy. The administrative police authority also expands the tendency to restrict public freedoms in public places whenever necessary (18).*

*From the above, it is clear that there is a relationship between public freedoms and administrative police, which is a consensual and complementary relationship so that they complement each other without rivalry or disharmony. Freedom is not exercised in an absolute manner in order to avoid disturbance and impunity, even for the administrative police, it does not exercise its powers in an absolute way so that tyranny does not prevail, but rather they exercise within the legal permissible limits.*

## 2-Guarantees to protect public freedoms

*It is not enough to recognize public freedom only, but it should be surrounded by a set of guarantees to prevent abuse and aggression from all administrative police authorities under the pretext of organizing. This is why we find it guaranteed by a set of guarantees, some of which are political and some of which are legal.*

### \*Legal guarantees

*The law provides for guarantees for public freedom that are considered to belong to individuals and block the deviations of power over them and lie in the control of the constitutionality of laws and administrative control. The first is guaranteed by the constitutional founder by the fact that all laws issued by the legislative and executive are constitutional, i.e. not in violation of the provisions of the Constitution, which is a way for the constitutional founder to guarantee public freedoms. As for the administrative control, it is that control that is exercised by the administration over itself, therefore it may be either subjective, that is, internal within the administrative structure, such as the president's control over his subordinates, accountability and correcting their actions for every error, default or negligence, as well as guidance, which is what is called the previous control, and the Subsequent is represented in the ratification (19). In addition, external administrative control may be carried out by an independent central authority or agencies, and it is carried out by committees or units entrusted with the task of monitoring the work of the administration(20).*

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**\*Political guarantees**

*These guarantees are parliamentary oversight and public opinion. Parliamentary oversight is one that is simplified by the legislature over the work of the executive authority and has a fundamental and role in the state's regulatory system through supervisory means stipulated by the constitution to protect the interests of both the State and society and to protect the fundamental rights and freedoms of citizens from all forms of bureaucracy and political and administrative corruption. The means of parliamentary oversight are: question, interrogation, commissions of inquiry or parliamentary inquiry(21).*

*For public opinion, it is a set of opinions that prevail in a society at a certain time on a particular subject, and has an important role to play in educating the individual about his rights and duties and everything related to his public and private interests on the one hand, and on the other hand it constitutes deterrent control over rulers and officials and forcing them to respect the Constitution and the law. Public opinion also plays a prominent role in bringing about political and social changes, which plays a role in shaping the sovereignty of the people in states that guarantee freedom of expression(22).*

**Conclusion**

*From the above it is clearly deduced the extent to which the administrative control authorities directly affect public freedoms, due to the flexibility of the idea despite its constitutional and social importance, and the provision of as many legal and political guarantees as possible to protect them from any attack that may occur by the administrative police authorities. This is because it has been proven that there is a relationship of complementarity, compatibility and correlation between them, as it is evident through the exercise*

*of their duties and powers within the limits set by the law for them, so that the administrative police authorities would not tyrannical and violate the freedoms of individuals and would not exercise freedoms in an absolute manner until chaos and disturbances prevail in which it is difficult to control and lead to disturb public order.*

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