

The Constraints On Administrative Control Freedom: A Comparative Study

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ABSTRACT

After achieving a balance between administrative control powers and rights and freedoms, which are legitimate demands of society's individuals, whether in normal circumstances or in exceptional circumstances faced by the state, maintaining public order is necessary for a secure life. Therefore, it can be said that there are no freedoms without limits, and no authority without limits. Improper use of freedom leads to chaos in society, just as arbitrary use of authority under the pretext of maintaining public order leads to the oppression of society. However, if there is a kind of balance between administrative control authority and public freedoms, it leads to achieving a state of justice, equality, and democracy. Therefore, the judiciary must play its active role in supervising administrative control authority to prevent it from deviating when performing tasks to maintain public order.

Keywords: Administrative control authority, limitations of administrative control, legitimacy of administrative control.

INTRODUCTION

First, the subject of the research:

Public freedoms, which all members of society seek to enjoy, are guaranteed by the constitution and laws of other states. However, with the evolution of the modern state, it has increasingly intervened in various aspects of life, making the issue of public freedoms a broad concern in various modern legal systems. States are now obligated to protect individuals' rights and freedoms, a principle echoed by most international treaties. Nevertheless, safeguarding public order in the state requires the administration, especially in exceptional circumstances, to intervene in restricting certain rights and freedoms of individuals, provided that it does not exceed the protection of public order. Despite its intervention, the administration is subject to judicial oversight.

Secondly, the Importance of the Research:

Public freedoms are guaranteed by most constitutions, charters, and legal legislations worldwide, representing utmost importance in individuals' lives. This importance is balanced by the necessity of protecting public order in the state. Safeguarding public order in the state sometimes requires the administration to use the authority of administrative control. This authority entails restrictions on individuals' rights and freedoms in exceptional circumstances. Therefore, the administrative control authority must not exceed its boundaries in regulation. Based on the foregoing, the significance of the study lies in defining the concept of administrative control and its impact on the rights and public freedoms of individuals.

Thirdly: Research Objectives:

The research aims to understand the concept of administrative control and discuss its authorities in facing exceptional circumstances. It also seeks to identify the normal and exceptional conditions that require the administrative entity to use its authorities in dealing with those circumstances. Subsequently, the research aims to elucidate the impact of administrative control on the rights and freedoms of individuals. Finally, we will present the results and recommendations we have reached with the goal of shedding light on the problems and obstacles faced by this system.

Fourth: Research Problematics:

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This study aims to clarify the authority of administrative control in normal circumstances, specifying its limits and the extent of its accountability. The study also seeks to explain the authority of administrative control in exceptional circumstances while outlining the limits of such supervision. The concept of protecting the system is flexible and can change from place to place and from time to time, making it impossible to confine. This flexibility allows administrative control authorities to expand the concept and use their powers arbitrarily under the pretext of protecting public order. This, in turn, negatively affects the rights and freedoms of individuals. All of this necessitates restricting the powers of administrative control and removing the ambiguity in defining the scope of its action.

Fifth: Research Methodology:

Every scientific research has its unique nature, distinct from other studies, and research methodologies and tools vary from one study to another. Therefore, in this research, we have adopted three different methodologies, each complementing the others, with the aim of thoroughly examining the research topic and understanding its various aspects. To achieve this goal, we followed the following approaches:

- 1) Comparative Methodology: This methodology involves conducting a comparative study of legislative positions and laws in some countries around the world, relevant to the study's focus.
- 2) Analytical Methodology: This scientific approach focuses on analyzing jurisprudential opinions, discussing them, and examining the latest legislative positions to derive scientific results.
- 3) Applied Methodology: The restrictions placed on the administrative authority's freedom in administrative control do not address theoretical issues but rather address a real-world problem. Therefore, we will enhance the research with a series of applications in the countries under study.

Sixth: Research Plan:

Introduction

Section 1: Definition of Administrative Control.

Section 2: Constraints on the Authority of Administrative Control in Normal Circumstances.

Subsection 1: Limitation of the Legitimacy Principle and Administrative Control Procedures.

Subsection 2: Limitation of the Subordination of Administrative Control Procedures to Judicial Oversight.

Section 3: Constraints on the Freedom of Administrative Control in Exceptional Circumstances.

Subsection 1: Broad Scope of Administrative Control Procedures in Exceptional Circumstances.

Subsection 2: Martial Law and State of Emergency.

The First Section

Definition of Administrative Control

Administrative control is one of the activities practiced by the administrative authority when facing exceptional circumstances, imposing a set of restrictions on individual freedoms with the aim of protecting public order in society. In light of this, this section will clarify what is meant by administrative control, beyond its definition, and explain its intended purpose. Throughout this section, we will highlight the distinguishing features of administrative control compared to other systems to avoid confusion. Therefore, we will explore these matters through two points: first, defining administrative control, and second, differentiating administrative control from other systems.

Definition of Administrative Control:

Administrative control refers to a set of measures, orders, and decisions issued by the competent authority to maintain public order. The French, Egyptian, and Iraqi legislators have not provided a clear definition of administrative control. Instead, they have established general rules and left the definition to jurisprudence and the judiciary ⁽¹⁾.

According to the French legal perspective, administrative control is seen as the sovereignty of order and peace achieved through the preventive application of the law ⁽²⁾. On the other hand, some French legal scholars, represented by Rivero, define it as the intervention of the administrative authority in regulating individual freedoms in a society governed by law ⁽³⁾. Dean of administrative law in France, De La Vaissière,

defines it as an aspect of

- 1) Dr.. Mazen Lilo Radi, Administrative Law, ed., without publishing house, p. 80, Dr. Muhammad Al-Shafi'i Abu Ras, Administrative Law, without a publishing house, p. 251, Dr. Ayman Youssef Al-Rafu', The extent of the executive authority's right to issue administrative control systems in the absence of a constitutional text, Journal of Legal and Political Sciences affiliated with the Scientific Society for Research and Strategic Studies, Jordan, 10th year, issue 4, p. 121.
 - 2) Abdel-Ani Bassiouni, The Theory of Administrative Control in Contemporary Positive Systems and in Islamic Sharia, 2nd ed. Arab Renaissance House, Cairo, 2004, p. 1.
 - 3) Loussif Khawla, Administrative Control, Authorities and Controls, a master's thesis submitted to the Faculty of Law and Political Science, Mohamed Kheidar University, Algeria, 2015, p. 9.
- the administrative authority's work in regulating individual freedoms and protecting public order ⁽¹⁾.

In Arab legal thought, administrative control is defined as the organization carried out by the state through preventive means to ensure the security and safety of society ⁽²⁾. Others describe it as a crucial function of the administrative authority used to preserve public order by addressing the elements of public security, public health, and public tranquility through issuing regulatory and individual decisions and using physical force. This naturally leads to imposing restrictions on individual freedoms ⁽³⁾.

Furthermore, the restriction of individual freedoms does not occur solely through administrative control. The origin of individual freedoms lies in the constitution, and they are subject to effective legislation first. These laws determine the general principles and provide a framework for the exercise of these freedoms (4).

It is worth noting that the authority of administrative control is exercised through executive bodies represented by the President of the Republic, the Prime Minister, and certain relevant ministries such as the Ministry of Interior, Health, Housing, Education, Higher Education, and Scientific Research. At the provincial level, administrative control is carried out by the governor, sub-governors, and the head of the municipal council. Administrative control is exercised within the framework of laws and decrees issued by the Presidency and the Cabinet (5).

In Iraq, the central government in the capital city takes on the responsibility of maintaining public order by establishing a unified legislative framework that applies to both central and local authorities simultaneously.

- 1) Nawal Bin Al-Sheikh, Administrative control and its impact on public freedoms, Master's thesis, Faculty of Law and Political Sciences, Kasdi-Merbah University, Algeria, 2013, p. 5.
- 2) Dr. Tharwat Abdel-Al Ahmed and others, Principles of Administrative Law, without a publishing house, p. 5.
- 3) Dr. Majed Rab Al-Helou, Administrative Law, University Press House, Alexandria, year 2000, p. 471.
- 4) Dr. Toaima Al-Jarf, Administrative Law, Modern Cairo Library, Cairo, 1970, p. 214, Dr. Tharwat Badawi, Administrative Law, Dar Al-Nahda Al-Arabiya, Cairo, 1971, p. 383.
- 5) Dr. Muhammad Refaat Abdel Wahab, The General Theory of Administrative Law, New University House, Alexandria, 2012, p. 204.

This is because administrative control procedures fall within the jurisdiction of the executive authority. Central administrative authorities, the Council of Ministers, the President of the Republic, and the Minister of Interior exercise these powers. Additionally, ministers have exceptional powers within the scope of specific administrative control, as specified by legal provisions.

Concerning local administrative control, representatives of the central government in the provinces, including governors, sub-governors, and district directors, carry out these responsibilities according to their jurisdiction and within the limits of the law ⁽¹⁾.

From the information provided, it becomes evident that administrative control is a preventive measure undertaken by the competent authority to preserve public order, public tranquility, and public health. In pursuit of this objective, various measures are implemented, and these measures inherently involve restricting individual freedoms.

Secondly: What Distinguishes Administrative Control from Others:

Administrative Control and Legislative Control:

Legislators sometimes resort to issuing a set of laws to restrict and regulate public freedoms, a practice known as legislative control. This differs from administrative control undertaken by the administrative authority. The fundamental principle is that administrative control operates within the framework established by legislation, as prescribed in the control law. However, this does not prevent the administrative control authority from making some decisions independently of legislation. This has led to the introduction of regulatory frameworks separate from legislation ⁽²⁾. This means that the administrative control authority exercises the power of legislating and enacting laws on behalf of the parliament. However, administrative control authority exercises these powers exceptionally, according to specific conditions and regulations.

- 1) Dr. Issam Abdel Wahab Al-Barzanji and others, Principles and Provisions of Administrative Law, without a publishing house in 1993, p. 221.
- 2) Dr. Ta'imah Al-Jarf, op. cit., p. 214, Dr. Nasser Al-Bad, The Fundamental in Administrative Law, 1st edition, Dar Al-Majd for Publishing and Distribution, p. 120, Muhannad Qasim Zaghir, The discretionary authority of the administration in the field of administrative control in normal circumstances, doctoral thesis, Faculty of Law, Al-Nahrain University, 2014, p. 60 et seq.

In any case, administrative control authority and legislative control are similar in that the function of legislative control is to issue and legislate laws through the parliament, directly specifying and defining individuals' freedoms. Similarly, administrative control's function is to issue regulations governing control through the executive authority to organize individuals' exercise of their freedoms. Ministers also exercise exceptional powers within the scope of specific administrative control, as specified by legal provisions.

As for local administrative control, it is carried out by representatives of the central government in the provinces, including governors, sub-governors, and district directors, each within their jurisdiction and within the limits of the law ⁽¹⁾.

Administrative Control and Judicial Control:

Judicial control is defined as a set of procedures undertaken by the judicial authority to investigate crimes after they occur, identify the perpetrators, and conduct investigations as a prelude to their trial. However, both administrative control and judicial control aim to preserve public order, they differ in terms of the authority responsible for control and its purpose.

Administrative control is carried out by the executive authority, while judicial control is carried out by the judicial authority through its representatives. In terms of purpose, administrative control is a preventive measure taken before anything affects public order. In contrast, judicial control is a subsequent measure taken after an incident that disrupts public order, making it a remedial action.

Administrative control is characterized by the nature of its procedures, issued in the form of organizational or individual decisions subject to administrative judicial oversight. In contrast, judicial control issues judicial decisions subject to regular judicial oversight ⁽²⁾.

- 1) Dr. Shamir Mahmoud Sabry, The Legality of Private Administrative Control to Protect Public Security, 1st edition, Arab Center for Publishing and Distribution, Cairo, 2018, p. 34 et seq., Muhannad Qasim Zaghir, previous reference, p. 58.
- 2) Dr. Mazen Lilo Radi, previous reference, p. 81.

The Second Section

Constraints on the Authority of Administrative Control in Normal Circumstances

The authority of administrative control faces numerous constraints under normal circumstances to ensure the legitimacy of administrative control procedures and preserve individual freedoms. In light of the above, this section is divided into two sub-sections. The first sub-section addresses the limitation based on the principle of legitimacy and the procedures of administrative control. The second sub-section is dedicated to discussing the limitation regarding the subordination of administrative control procedures to judicial oversight.

The First Sub-section

Limitation of the Legitimacy Principle and Administrative Control Procedures

The principle of legitimacy is one of the crucial legal principles that various countries around the world seek to apply, regardless of the existing political system. The principle of legitimacy signifies the state's endeavor to apply the law to regulate the behavior and activities ⁽¹⁾ of various segments of society while adhering to the law. When the principle of legitimacy is applied in the exercise of administrative control, it becomes an authority aimed at restricting the rights and freedoms of individuals guaranteed by the constitution ⁽²⁾.

In fact, determining freedoms is a matter that depends on the legislator's discretion, where there is no authority above the legislator that can restrict freedoms. This is articulated in the French constitution issued in 1958, where Article 34 specifies the powers of the legislator exclusively. Among these powers is the determination of basic guarantees granted to individuals for the exercise of public freedoms. On the other hand, some constitutions empower the executive authority to regulate individuals' activities, organize their affairs, and impose restrictions on their public freedoms to maintain public order.

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- 1) Dr. Kharshi Elham, Lectures on Administrative Control, Faculty of Law and Political Sciences, University of Mohamed Lamman Debaghin, Algeria, 2016, p. 81.
 - 2) Dr. Muhammad Suleiman Nayef, Palestinian Administrative Law, Part 2, Dar Al-Nahda Al-Arabiya, Cairo, 2020, p. 18.

This means that all actions taken by the executive authority to preserve public order are subject to the principles of legitimacy that govern administrative decisions ⁽¹⁾.

In Iraq, Article 46 of the Constitution of the Republic of Iraq for the year 2005 stipulates that there should be restrictions on individuals in the exercise of their rights and freedoms guaranteed by the Constitution only by law or based on it. The restriction should not encroach upon the essence of the right or freedom. It is evident from this text that limiting the public freedoms of individuals is only legitimate if it is done by law or based on a law ⁽²⁾.

However, the question that arises is how the administration deals with public rights and freedoms in exceptional circumstances. Here, a distinction should be made between two situations:

The first situation: the presence of constitutional provisions guaranteeing public freedoms:

The general rule is that the administration has the right to maintain public order in all its aspects, and for this purpose, it has the authority to intervene in restricting freedoms and the activities of individuals. This intervention varies depending on the legislative text in existence. The regulation of individual freedoms and their restriction is not solely dependent on the exercise of administrative control but also on the presence of legislative texts regulating those rights and freedoms.

Based on the foregoing, the administration may grant, prohibit, or restrict these freedoms in accordance with the legislative text. If the administration exceeds the limits set by the text, its action is tainted with the flaw of exceeding authority. Legislative texts regulating the freedoms of individuals and their activities must be interpreted narrowly, meaning that the interpretation should favor the freedoms of individuals ⁽³⁾.

The second case: In the presence of a constitutional text that guarantees individual freedoms.

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- 1) Dr. Issam Abdel-Wahhab Al-Barzanji and others, previous reference, p. 224.
 - 2) Article (46) of the Constitution of the Republic of Iraq of 2005.
 - 3) Dr. Rajab Hassan Abdel Karim, Administrative Activity, Health Control Measures to Combat the Corona Pandemic, Sadat University, Faculty of Law, Egypt, year 2023, p. 41.

In the case of the existence of a legislative text regarding the authority of administrative control, not to interfere with it except by law or within the limits of the law, such as the text on the freedom of assembly, demonstration, religious freedoms, and other public freedoms ⁽¹⁾, in these cases, the administrative entity is committed not to exceed the legislative text. Consequently, the administrative control authority is prohibited from restricting individual freedoms or imposing stricter controls than those stipulated, except in exceptional and necessary circumstances that allow deviating from the rules of legitimacy regulating individual freedoms in ordinary circumstances.

Despite the expansion of legal texts granting powers to administrative control bodies regarding certain freedoms, the law provides individuals with guarantees in return. It is the responsibility of the administrative control authority to adhere to these guarantees.

It is worth noting that the commitment of the administrative entity to legislative texts concerning public freedoms does not imply an absolute restriction on the part of the administration. Instead, the legislator grants it a certain degree of discretionary power to maintain public order. Administrative justice has established a general theory to limit the powers of administrative control, ensuring that they do not override individual freedoms. However, the authority of the administrative entity varies depending on the circumstances in which it is exercised. In all cases, the actions of administrative control are subject to judicial oversight in most countries worldwide. Administrative justice not only monitors legality but also assesses its appropriateness ⁽²⁾.

The Second Sub-section

Limitation of the Subordination of Administrative Control Procedures to Judicial Oversight

Decisions and procedures of administrative control are administrative actions, and by their nature, they are subject to the principles of legality that govern administrative decisions. Consequently, they are subject to judicial oversight. In light of the foregoing, we will explore the submission of administrative control to judicial scrutiny in terms of its objectives and examine the oversight of its reasons. Subsequently, we will elucidate the scrutiny of the means employed.

1) Dr. Issam Abdel-Wahhab Al-Barzanji and others, previous reference, p. 225.

2) Dr. Rajab Hassan Abdel Karim, previous reference, p. 42 et seq.

Oversight of Objectives: The administrative entity must adhere to the purpose for which the legislature granted it those powers. It is imperative for the administrative entity not to exceed the established purpose. If it uses its powers to achieve a goal diverging from the objectives of administrative control and the protection of public order, or if it seeks to achieve public interests falling within the general control purposes defined by the legislator, such use of authority is considered a deviation. Consequently, such an action is subject to the scrutiny of the competent judiciary ⁽¹⁾. Examples of such deviations can be found in the applications of the French administrative justice system. Administrative control bodies issued a decision to compel one of the contractors to fulfill contractual obligations, and consequently, such a decision was subject to the scrutiny of the French judiciary ⁽²⁾.

Oversight of Reasons: For administrative control procedures to be deemed lawful, these measures must be taken to protect public order. It is the responsibility of the administrative judge to verify their existence. If the reasons behind the actions aim to achieve purposes other than those of administrative control, a decision by the administrative entity is considered void. In such a case, it lacks legal support and is tainted by the flaw of violating the law ⁽³⁾.

Oversight of Means: The administrative judge not only limits oversight to the objectives and reasons of administrative control but extends it to scrutinize the methods employed by administrative control bodies in implementing control. Administrative control bodies are obligated to use appropriate and suitable means in control to ensure the protection of public order. An example of this is the decision of the French

administrative justice system to annul the mayor's decision to extend the ringing of church bells from three minutes to five minutes. The judiciary stated that the reason for canceling this decision is that the targeted interest does not correspond to the harm and inconvenience caused by the decision to the secure citizens. It seems that the French judge,

- 1) Muhareb Saud Harbi, Administrative control and its impact on freedoms, a master's thesis submitted to the Faculty of Law, Middle East University, Jordan, in the year 2015, p. 61, Garouf Jamal, Judicial Control of Administrative Control Acts, a master's thesis submitted to the Faculty of Law, Badji Mokhtar University, Algeria, in the year 2006. , p. 9.
- 2) Dr..Issam Abdel Wahab Al-Barzanji and others, previous reference, p. 225.
- 3) Loussif Khawla, Administrative Control, Authorities and Controls, a master's thesis submitted to the Faculty of Law and Political Science, Mohamed Kheidar University, Algeria, 2015, pp. 61 et seq.

during the scrutiny of the means or appropriateness, transitioned from a judge of legality to a judge of appropriateness. This, in any case, restricts the freedom of the administrative entity and hinders its creativity, a point criticized by some legal scholars ⁽¹⁾.

The Third Section

Constraints on the Freedom of Administrative Control in Exceptional Circumstances

If exceptional circumstances arise that threaten the order, the administrative entity may use its powers to confront the existing danger and restore order. In order to achieve this, the authorities specified in the constitutional rules are utilized. In cases where there is no rule governing these powers, recourse can be made to the theory of administrative justice regulating the actions of administrative control bodies in exceptional circumstances. This theory expands the authority of administrative control bodies. In light of the above, we will explore these restrictions by dividing them into two branches: the first branch addresses the scope of administrative control procedures in exceptional circumstances, and the second branch discusses customary provisions and the state of emergency in the context of exceptional circumstances.

The First Sub-section

Broad Scope of Administrative Control Procedures in Exceptional Circumstances

The public order in a country may experience exceptional circumstances such as wars, conflicts, and others. These circumstances affect the freedom and rights of individuals, prompting the intervention of administrative control authorities to address these situations. They take a series of measures and actions to protect public order. While such intervention might be considered a departure from the normal principles of legality, it is deemed necessary for the protection of the state and the exercise of its right to self-defense. However, even in these exceptional circumstances, these measures remain subject to judicial oversight ⁽²⁾.

- 1) Nawal bin Al-Sheikh, previous reference, p. 28.
- 2) Kharshi Laham, previous reference, p. 103 et seq., Dr. Souad Al-Sharqawi, Administrative Law and Economic Liberalization, Dar Al-Nahda Al-Arabiya, Cairo, 1994, p. 151 et seq.

Therefore, the administrative judge is the one who determines the existence of exceptional circumstances that warrant the intervention of administrative control bodies in taking exceptional measures. In this context, it is a prerequisite that the administrative entity is unable to confront the exceptional circumstances using its regular means under normal conditions. Here, administrative control bodies may find themselves compelled to resort to extraordinary means.

The theory of emergency conditions requires the presence of an utmost necessity to protect public order, where the principles of legality are incapable of safeguarding this order and impede the duties of administrative control bodies. In such cases, the authorities granted to the administrative entity differ from those granted under normal legal provisions. The exceptional circumstances provide the administrative entity with broad powers to protect public order. However, decisions made based on these exceptional authorities are subject to judicial oversight. Therefore, it is permissible to request their annulment or compensation ⁽¹⁾.

The legal systems of France, Egypt, and Iraq have adopted the theory of exceptional circumstances, and the legislatures of these countries have enshrined this theory in legislative texts. In France, Article 16 of the 1958 Constitution grants powers to the President of the Republic in exceptional circumstances. It stipulates that when public order, represented by public institutions, or the safety of the state's territory is threatened, the President of the Republic is authorized to take necessary measures after consulting with the Prime Minister, the Presidents of the National Assembly and the Senate, and the Constitutional Council. The President then addresses a statement to the French people outlining these measures. Subsequently, the French Parliament convenes with the force of law. In this situation, the National Assembly cannot be dissolved while exercising these exceptional powers ⁽²⁾.

The French Council of State has considered certain cases as exceptional circumstances, such as the danger of an epidemic in 1955, the serious political tension in 1947, and the shortage of supplies following the war in 1955 ⁽³⁾.

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- 1) Dr. Muhyiddin Al-Qaisi, General Administrative Law, Al-Halabi Legal Publications, Beirut, 2007, p. 185 et seq.
 - 2) Muhammad Qasim Zaghir, previous reference, p. 109
 - 3) Dr.. Souad Al-Sharqawi, previous reference, p. 152.

In Egypt, Article 154 of the 2014 Constitution grants the President of the Republic the authority, after consulting the Cabinet, to declare a state of emergency as regulated by the law. Regardless, the declaration must be presented to the parliament within seven days from the date of its announcement for the parliament to decide on it. If the announcement is made during a non-ordinary session, the parliament must be immediately summoned. In all cases, the declaration requires the approval of the majority of the members of the parliament. The state of emergency declaration is limited to a specific duration not exceeding three months, and its extension for a similar period is only allowed with the consent of two-thirds of the members of the parliament. The parliament cannot be dissolved during a state of emergency ⁽¹⁾.

In Iraq, Article 61, paragraph 9, of the 2005 Constitution stipulates that one of the powers of the Council of Representatives is to approve the declaration of a state of war and a state of emergency. This approval must be obtained by a two-thirds majority based on a joint request from the President of the Republic and the Prime Minister ⁽²⁾.

The regulation of exceptional circumstances is not limited to constitutional texts. The French legislator issued the April 1841 law concerning expropriation in cases of emergency. In Egypt, the Public Mobilization Law No. 18 of 1972 was enacted, along with the Civil Defense Law No. 20 of 1974. In Iraq, the Defense Order for National Safety No. 1 was issued in 2005.

The Second Subsection

Martial Law and State of Emergency

The legislator in France distinguishes between Martial Law and a state of emergency, and in reality, both are exceptional legal systems for administrative regulation. Both grant the administration a set of authorities to address the danger threatening the state. In Martial Law, which result from a war that threatens the existence of the state, the state is allowed to declare Martial Law. As for a state of emergency, the state declares it to address internal problems that threaten public order. The severity of a state of emergency does not reach that of Martial Law, as the restrictions imposed on individuals after the declaration of Martial Law are more stringent and dangerous than those imposed after the declaration of a state of emergency.

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- 1) Article (154) of the Constitution of the Arab Republic of Egypt for the year 2014.
 - 2) Article (61) Paragraph (9) of the Constitution of the Republic of Iraq for the year 2005.

Martial Law in France are declared by a decision of the French Cabinet. These rules may apply to the entire country or be imposed on a specific region of the state for a period not exceeding twelve days. After the expiration of this period, it is necessary to enact a law by the French Parliament ⁽¹⁾.

As for Egypt, Article (1) of the Martial Law Law No. 15 of 1923 stipulates that Martial Law may be declared in the event of the security or public order in Egypt being endangered, whether this danger is due to an attack by armed enemy forces or the occurrence of disturbances within Egypt ⁽²⁾.

In Iraq, Article 61, paragraph 9, of the Constitution of the Republic of Iraq for the year 2005 stipulates that the Iraqi Council of Representatives is empowered to approve the declaration of war and a state of emergency by a two-thirds majority of its members. This is based on a joint request from the President of the Republic and the Prime Minister. After approval, a state of emergency is declared for a period of thirty days, extendable. The Prime Minister is authorized to manage the war and the state of emergency, and this is regulated by a law that does not contradict the constitution ⁽³⁾.

It is worth noting that the declaration of Martial Law entails a set of effects, which can be summarized as follows:

- 1) Transfer of most of the competencies of the civil authority responsible for administrative activities to the Martial Law authority, often represented by the military or a delegated body.
- 2) Granting the competent body for Martial Law broad exceptional powers. This authority can decide, through a declaration or a written or oral order, the necessary measures to protect the state. It has the power to withdraw weapons from individuals, license weapons, issue orders to search individuals and places at any time, and has the authority to monitor what newspapers publish before publication. Additionally, it can suspend the publication of news or a set of news without warning.

And it is permissible to establish military courts that consider crimes resulting from violations of the decisions of the General Military Governor. These judgments are not subject to appeal under all circumstances,

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- 1) Dr. Issam Abdel Wahab Al-Barzanji and others, previous reference, p. 228
 - 2) Article (1) of Egypt's Martial Law No. 15 of 1923.
 - 3) Article (61) Paragraph (9) of the Constitution of the Republic of Iraq for the year 2005.

but they remain subject to the approval of the overall military commander. He has the right to retain the case without referring it to the courts, to approve it, and also to have the right to mitigate the punishment or replace it with a lesser penalty. He can also eliminate some penalties or suspend their execution ⁽¹⁾.

Dr.. Ta'imah al-Jarf, previous reference, p. 238 et seq.

CONCLUSION

Throughout this research, I have discussed the definition of administrative control and the extent of its proper application in various countries worldwide. I have also elucidated the distinctive features of administrative control compared to other different systems. Furthermore, I have outlined the limitations that restrict the authority of administrative control under normal circumstances and highlighted the constraints imposed on administrative control in exceptional situations.

In conclusion, I present this research to the reader and researcher, providing a concise summary. I have concluded this study by presenting the results and recommendations beneficial for researchers in the field of legal sciences, especially concerning the legal process of implementing administrative control authority and addressing certain legal issues. The research addressed several demands, with the first demand focusing on defining administrative control. The second demand examined the restrictions that hinder administrative control authority in normal circumstances, while the third demand delved into the limitations affecting the freedom of administrative control in exceptional circumstances.

Based on the aforementioned, the group has reached the following results and recommendations:

First, the Results:

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1. Legislations in various countries do not contain a specific definition of administrative control. Legislators in France, Egypt, and Iraq did not provide a precise definition of administrative control, leaving room for legal interpretation and judicial discretion.
2. The principle of legitimacy remains valid under normal conditions for exercising administrative control, even in exceptional circumstances. Administrative entities must not exceed their authority; otherwise, their actions may be tainted by the flaw of exceeding their power, making them subject to challenge.
3. Exceptional circumstances necessitate the presence of a severe and imminent threat endangering the state's existence and the safety of its citizens. In such instances, administrative bodies cannot address these threats without utilizing their powers under exceptional circumstances.
4. The actions of administrative control bodies are subject to judicial oversight. Therefore, these authorities must not exceed their defined powers, which are aimed at safeguarding public order.
5. Despite the commitment of administrative control bodies to the limits defined by legislation regarding rights and freedoms, the judiciary grants these bodies a kind of freedom in restricting those rights and freedoms under its supervision.
6. Administrative control actions are not considered sovereign acts since they are subject to judicial oversight. The importance of this matter in ensuring that these bodies adhere to the constraints and boundaries of administrative control.
7. **Second, the Recommendations:**
8. It is essential for the legislator to precisely define the concept of public order since an expanded interpretation may threaten individuals' rights and freedoms guaranteed by the constitution.
9. There is a crucial need to strengthen judicial scrutiny over administrative control actions to prevent exceeding the limits of that authority and to safeguard the rights and freedoms of individuals.
10. It is necessary to specify the fundamental freedoms that should not be encroached upon even under exceptional circumstances.
11. Administrative control bodies are recommended to refrain from excessively restricting rights and freedoms under exceptional circumstances. Instead, they should restrict these rights and freedoms only to the extent necessary to preserve order in the state.
12. Activating the role of parliament in overseeing administrative control bodies when restricting rights and freedoms, considering that parliament is the legitimate representative of the people.

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