Balance between Administrative Control Powers and Public Freedoms

التّوازن بين سُلطات الضّبط الإداري والحريات العامّة

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Abstract:

This research paper examines the role of administrative policing as a legal mechanism exercised by public authorities to maintain public order, based on the powers and prerogatives granted by law to administrative policing authorities. This role aims to ensure security and social stability; however, the exercise of such powers raises questions regarding their impact on individual rights and freedoms, particularly when they involve the imposition of restrictions or the adoption of regulatory measures that may be accompanied by sanctions against violators.

Nevertheless, the protection of public order does not grant administrative policing authorities unlimited power to restrict freedoms. Rather, the exercise of these powers remains subject to legal safeguards preventing the abuse of authority. Therefore,

achieving a balance between the requirements of maintaining public order and ensuring respect for public freedoms requires administrative policing authorities to comply with the principle of legality, so that the measures adopted remain necessary and proportionate to the objectives pursued. This ensures the preservation of security and stability without infringing upon the fundamental rights of individuals, while reinforcing the principles of justice and the rule of law.

Keywords: Administrative policing authorities, public freedoms, public order.

ملخص:

تتناول هذه الورقة البحثية دور الضبط الإداري باعتباره إحدى الوسائل القانونية التي تعتمدها السلطة العامة في سبيل المحافظة على النظام العام، وذلك من خلال الصلاحيات والامتيازات التي يمنحها القانون لهيئات الضبط الإداري. ويهدف هذا الدور إلى تحقيق الأمن والاستقرار داخل المجتمع، غير أن ممارسة هذه الاختصاصات قد تثير إشكالات مرتبطة بمدى تأثيرها على الحقوق والحريات الفردية، لاسيما عندما تتضمن فرض قيود أو اتخاذ تدابير تنظيمية قد تقترن بجزاءات في مواجهة المخالفين.

غير أن حماية النظام العام لا تمنح سلطات الضبط الإداري سلطة مطلقة في تقييد الحريات، بل تظل ممارستها مقيدة بجملة من الضوابط القانونية التي تحول دون التعسف في استعمال السلطة. ومن ثم، فإن تحقيق التوازن بين متطلبات المحافظة على النظام العام وضمان احترام الحريات العامة يقتضي التزام هذه السلطات بمبدأ المشروعية، بحيث تكون التدابير المتخذة ضرورية ومتناسبة مع الأهداف المرجوة منها، بما يضمن حماية الأمن والاستقرار دون المساس بالحقوق الأساسية للأفراد، وترسيخ مبادئ العدالة وسيادة القانون.

كلمات مفتاحية: سلطات الضبط الإداري، الحريات العامة، النظام العام.

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INTRODUCTION

Administrative police authorities play a central role in maintaining public order within society by seeking to ensure security and stability, protect public health, and preserve social peace. For this purpose, legislators have granted these authorities broad powers enabling them to intervene preventively in order to address various threats that may affect the public interest. However, the exercise of these powers remains subject to the requirement of respecting the legal framework governing them, in order to achieve a balance between the necessities of maintaining public order and the protection of individuals' fundamental rights and freedoms.

Public freedoms are considered among the fundamental principles upon which a democratic system is based, as they guarantee individuals the exercise of essential rights, such as freedom of expression, freedom of movement, freedom of assembly, and other basic rights. Despite their importance, these freedoms are not absolute, as their exercise may be regulated or restricted within the limits required to protect public order, provided that such restrictions are justified, proportionate, and do not undermine the essence of these rights and freedoms. Therefore, the main challenge lies in achieving a fair balance between public security requirements and the preservation of individual freedoms without any form of abuse[1].

The principle of legality constitutes one of the most important safeguards governing the intervention of administrative police authorities, as it requires that no measure be taken unless it is based on a clear and specific legal provision. Any measure likely to restrict freedoms must have a legal basis defining its conditions and scope of application, thereby preventing the misuse of authority and protecting individuals from arbitrary measures. Furthermore,

judicial review of the actions of administrative police authorities represents a fundamental guarantee to ensure compliance with the limits of their powers and to verify the legality of the measures adopted.

Administrative police authorities employ various legal and regulatory mechanisms to maintain public order while respecting public freedoms through regulatory measures and preventive actions. However, these measures must comply with the principle of proportionality, ensuring that restrictions do not exceed what is necessary to protect the public interest. Legal disputes may arise, particularly concerning freedoms such as peaceful assembly and press freedom, where authorities may justify restrictions on security grounds while individuals may view them as violations of their rights. Therefore, effective independent judicial review remains essential to ensure a fair balance between public order requirements and the protection of individual freedoms.

Human rights institutions and civil society organizations also play an important role in monitoring the actions of administrative police authorities and promoting their compliance with legal rules. Through awareness-raising, supervision, and participation in public dialogue, these bodies contribute to strengthening a culture of respect for rights and freedoms among various actors. They also help develop public policies that ensure security and stability without undermining the fundamental rights of citizens.

Comparative experiences demonstrate that states capable of achieving harmony between the requirements of administrative policing and public freedoms are those that uphold the principle of the rule of law and adopt an effective system of separation of powers. The existence of clear legal provisions, an independent judiciary exercising oversight over administrative actions, and a

free media constitute essential guarantees for preventing the abuse of executive power and protecting individuals' rights. Therefore, establishing strong and effective institutions represents a fundamental condition for maintaining this balance.

The relationship between administrative police authorities and public freedoms requires the adoption of a balanced approach that takes into account the protection of society without sacrificing individual rights. The main challenge lies in finding a formula that ensures public security while preserving freedoms, which requires precise legislation, effective oversight mechanisms, and social awareness based on the values of justice, freedom, and the rule of law.

This study derives its importance from the increasing need to examine the limits of the relationship between administrative police powers and public freedoms, particularly in light of the expansion of administrative intervention and the growing preventive powers granted to public authorities. Maintaining this balance constitutes a fundamental criterion for assessing the extent to which the state respects democratic principles and good governance requirements, whereas its disruption may lead to a decline in the protection of rights and freedoms. Therefore, this topic has significant practical importance due to its direct connection with safeguarding fundamental rights and consolidating the principle of legality.

The importance of administrative policing lies in its role as a necessary instrument for ensuring social stability and protecting public order. However, it remains the subject of continuous debate due to its potential impact on the scope of public freedoms. While it represents a necessity for regulating behaviors that threaten the public interest, it may become, in the absence of legal safeguards, a means of restricting fundamental rights. Hence, the need arises to

establish a clear legal framework defining its powers and limits, ensuring that administrative measures do not exceed the purpose for which they were established.

Accordingly, achieving a balance between administrative policing requirements and the protection of rights and freedoms constitutes one of the essential foundations of a democratic state governed by law. This requires effective legal and judicial oversight, in addition to strengthening the role of civil society in monitoring the extent to which authorities comply with legally established safeguards. Such mechanisms help prevent potential abuses and ensure that administrative police measures remain consistent with constitutional principles and individuals' fundamental rights[2].

Based on this perspective, the study raises the following research question: **How can a balance be achieved between administrative police authorities and public freedoms, allowing these authorities to fulfill their role in maintaining public order without infringing upon individuals' fundamental rights, while ensuring the existence of effective legal and supervisory mechanisms capable of preventing any abuse or misuse of power?**

To address this research question, this paper is structured around two main themes: the first examines the role of administrative police authorities in maintaining public order, while the second explores the challenges involved in achieving a balance between security requirements and the protection of public freedoms.

1. The Role of Administrative Police Authorities in Maintaining Public Order

Administrative police authorities constitute one of the main

mechanisms through which the state ensures the preservation of public order within society. They are responsible for maintaining security and stability and protecting the public interest from various threats that may undermine social peace. Through the legal powers granted to them, these authorities intervene to regulate individual behavior and organize different activities in a manner that reconciles public security requirements with the necessity of safeguarding public freedoms. However, the broad scope of these powers raises questions regarding their impact on individuals' fundamental rights and freedoms, which requires defining the legal framework governing their intervention and establishing safeguards to prevent abuse of authority while ensuring a balance between public order requirements and the protection of citizens' rights.[3]

1.1 The Concept of Administrative Police and Its Objectives:

Administrative police is considered a fundamental instrument adopted by the State to maintain public order through a set of preventive measures and procedures aimed at ensuring security and stability within society. This concept encompasses various activities regulated by the competent authorities to ensure that public life operates in accordance with applicable laws and regulations. Its role is not limited to imposing restrictions; rather, it seeks to achieve a balance between protecting public order and safeguarding rights and freedoms. Therefore, it constitutes a necessary mechanism for ensuring the proper functioning of public services and protecting individuals and property from any threats that may undermine social peace.

1.1.1 -Definition of Administrative Police:

Administrative police has been defined differently in legal doctrine depending on the perspective adopted. Some scholars

regard it as an objective pursued by the State to preserve public order, while others consider it a regulatory mechanism designed to achieve that objective, even though it may restrict public freedoms guaranteed by law. Conversely, some view administrative police as a neutral regulatory function rather than an inherent limitation on individual rights. Another doctrinal perspective emphasizes the tension between administrative police powers and the rule of law, arguing that such powers authorize restrictions on public freedoms whenever necessary to protect public order. Overall, administrative police is generally understood as a legal and administrative function whose scope, methods, and objectives are determined by the constitutional and political framework of the State.[4]

Administrative police is generally understood as a preventive legal mechanism through which administrative authorities maintain public order by protecting public security, safety, health, and tranquility. Although its exercise may require restricting certain public freedoms, such limitations must be justified by the public interest, remain within clearly defined legal boundaries, and respect the principle of necessity. Rather than providing a precise statutory definition, most legal systems leave the concept of administrative police to legal doctrine, focusing instead on its objectives and scope of application. This approach reflects the flexible and evolving nature of administrative police, which must adapt to the changing needs and circumstances of society while maintaining an appropriate balance between public order and the protection of individual rights.

The concept of public order is dynamic and varies across time and place. It is not fixed but is influenced by the cultural and social characteristics of each country. What is regarded as a matter of public order in one society may not be considered as such in

another. For example, polygamy is legally accepted in some Islamic countries, whereas it is prohibited in many Western legal systems. Likewise, the concept of public order evolves over time, as certain rules once considered fundamental may lose their significance in contemporary society. This demonstrates that administrative police must remain flexible and adaptable to social developments in order to maintain an appropriate balance between the State's authority to preserve public order and the protection of individual rights.

1.1.2 .Objectives of Administrative Police

Administrative police authorities primarily aim to protect and preserve public order by preventing any violation or disturbance that may threaten its stability under all circumstances. Their actions must remain strictly directed toward achieving this fundamental objective. Any departure from this purpose, even when intended to serve another public interest, constitutes an abuse of power and an unlawful exercise of administrative authority.[5]

The objectives of administrative police are reflected in several fundamental dimensions. These include maintaining public security by preventing crime and addressing any acts that may disturb social order; protecting public health through preventive measures and the supervision of activities that may affect the health of individuals; and preserving public tranquility by regulating public events and ensuring that public peace and quiet are not disrupted. These functions are exercised within a legal framework that ensures a balance between the requirements of maintaining public order and respecting fundamental freedoms, thereby reinforcing the principle of the rule of law and preventing any abuse of administrative authority.

1.2 .Powers Granted to Administrative Police Authorities

Administrative police constitutes an essential mechanism for

maintaining public order and operates through various authorities at both the national and local levels, whether within the framework of general administrative police or special administrative police. The powers exercised by these authorities encompass a range of legal measures, such as regulatory and individual administrative decisions, as well as material measures, including direct enforcement. Nevertheless, these powers remain subject to the principles of legality and necessity, ensuring that the preservation of public order is achieved without undermining individual rights and fundamental freedoms.[6]

1.2.1 .General Administrative Police Authorities

The President of the Republic, as the highest executive authority, is entrusted with maintaining national unity, public order, and State stability, and is constitutionally empowered to adopt exceptional measures—such as declaring a state of emergency, a state of siege, or a state of war—when required to safeguard national security. Although the Constitution does not expressly identify the Prime Minister as a general administrative police authority, the office exercises administrative police powers through its regulatory authority by issuing executive decrees that regulate public freedoms in accordance with legislative provisions. At the local level, the Wali (Governor) plays a central role in maintaining public order by acting both as the executive authority of the wilaya and as the representative of the central government, exercising powers conferred by legislation governing provincial administration and public security.

Similarly, the President of the Municipal People's Assembly (Mayor) exercises administrative police powers at the municipal level in his or her capacity as the State’s representative within the

municipality. Under the supervision of the Wali, the Mayor is responsible for maintaining public order and ensuring the proper implementation of administrative police measures within the municipality. In carrying out these functions, the Mayor may request the intervention of the National Police or the National Gendarmerie whenever necessary to preserve public security, in accordance with Article 93 of Law No. 11-10.[7]

1.2.2 .Special Administrative Police Authorities

Ministers exercise special administrative police powers that are limited to the scope of their respective ministries. Within their areas of competence, they are authorized to adopt regulatory and preventive measures aimed at maintaining public order and ensuring the proper functioning of the sectors under their supervision. Although ministers do not generally exercise general administrative police powers, certain ministers—most notably the Minister of the Interior—enjoy broader administrative police authority due to the nature of their responsibilities. This enables them to adopt nationwide measures and decisions necessary for the preservation of public order and public security.[8]

1.2.3 .Administrative Police Measures

The measures adopted by administrative police authorities may be classified into legal measures and material (physical) measures.

1.2.3.1 .Legal Measures

Regulatory decisions refer to administrative police regulations that establish general and binding rules applicable to all individuals. They are issued by the executive authority with the aim of regulating the exercise of public freedoms within the limits established by law. In this regard, the Constitution grants the President of the Republic the power to issue such regulations, a

constitutional competence that cannot be transferred or delegated to other authorities.

Individual administrative decisions, on the other hand, are administrative measures directed toward specific individuals and are based on existing legal or regulatory provisions. These decisions must comply with the applicable legal framework and aim to protect public order without exceeding the limits of administrative authority or resulting in an abuse of power. However, the possibility of issuing individual decisions in the absence of a prior legal basis remains a subject of debate among legal scholars. While some consider that every individual administrative decision must necessarily rely on an existing legislative or regulatory provision, others argue that exceptional circumstances may justify immediate administrative intervention to safeguard public order, even without an explicit authorization. Judicial practice has recognized the legality of such decisions when they are required to address urgent situations threatening public order or when the law does not expressly prohibit the adoption of independent individual measures in such circumstances.

1.2.3.2 .Material (Physical) Measures

Material measures consist of practical actions undertaken by administrative police authorities that are not intended to produce legal acts but rather to ensure the direct implementation of laws and administrative regulations.

Direct enforcement constitutes one of the essential means available to the administration to ensure the effective implementation of laws and administrative decisions when individuals fail to comply voluntarily. Although the ordinary principle requires the enforcement of administrative decisions through judicial procedures, the administration may exceptionally

resort to immediate execution in specific circumstances. This measure is permitted when an explicit legal provision grants the administration such authority, when the law does not provide for a specific sanction in the event of non-compliance and administrative intervention becomes necessary to ensure enforcement, or when a situation of urgent necessity requires immediate action to protect public order.

2 .Challenges in Achieving a Balance Between Security and Public Freedoms

Achieving an appropriate balance between security and public freedoms remains one of the most significant challenges facing modern states. Public authorities seek to preserve public order while respecting the fundamental rights and freedoms of individuals. Although security measures are indispensable for protecting society against various threats, excessive reliance on such measures may result in unjustified restrictions on individual freedoms, raising concerns regarding compliance with democratic principles and human rights standards.

In certain circumstances, exceptional measures may be justified to address security crises, such as states of emergency or counter-terrorism operations. However, these measures may also lead to an expansion of executive authority that limits individual freedoms, particularly where effective legal and judicial oversight is lacking to prevent the misuse or abuse of such exceptional powers.[9]

2.1 Limits on Restricting Freedoms within the Framework of Law

Restricting freedoms within the framework of law is considered a necessary measure for maintaining public order and protecting the rights of individuals and society. However, such

restrictions must be subject to clear legal safeguards that prevent any infringement upon the essence of fundamental rights. Laws establish the framework within which public freedoms may be exercised, ensuring that they do not result in harming the rights of others or threatening security and social stability. Nevertheless, these restrictions must remain necessary and proportionate to the objectives pursued and must not be used as a means of imposing arbitrary or unjustified limitations on freedoms, such as freedom of expression, freedom of movement, and the right to peaceful assembly[10].

The principle of legality requires that any restrictions imposed on freedoms be based on legal provisions issued by competent authorities and remain subject to judicial review to prevent their arbitrary application. Accordingly, any limitation of rights must be defined according to precise criteria, such as the protection of national security, public health, or public morals, without becoming a tool for suppressing pluralism or restricting freedom of opinion. Achieving a balance between such restrictions and the requirements of security and stability constitutes one of the major challenges facing modern democratic systems.

Furthermore, the effectiveness of any legal system in maintaining this balance depends on the existence of independent oversight institutions, such as the judiciary and human rights bodies, which ensure that adopted measures comply with constitutional principles and international human rights instruments. The absence of effective oversight may lead to the misuse of laws in ways that conflict with fundamental freedoms, thereby undermining confidence in the legal system and potentially causing social tensions. Therefore, establishing mechanisms that allow for the review of imposed restrictions and the assessment of

their necessity and legality is an essential element in maintaining the balance between security requirements and the protection of rights and freedoms.

2.2 -The Role of Judicial Review in Preventing Abuse of Power

Judicial review constitutes one of the fundamental guarantees against the abuse of administrative police powers in restricting public freedoms. It ensures that measures adopted within the framework of administrative policing do not exceed the limits established by law and are not used arbitrarily in a manner that infringes upon individual rights. Through such review, individuals affected by administrative decisions are granted the possibility of challenging these decisions before competent courts, thereby contributing to achieving a balance between maintaining public order and safeguarding constitutionally protected rights and freedoms.

Judicial review of administrative police measures takes several forms, including the review of the legality of administrative decisions, whereby the administrative judge examines whether police measures comply with laws and constitutional principles and has the authority to annul or modify them when they are found to be unlawful. Judicial review also includes assessing the principle of proportionality between the measure adopted and the objective pursued, ensuring that public freedoms are not subjected to unnecessary or unjustified restrictions. In addition, courts may issue orders requiring the administration to withdraw unlawful decisions or adopt alternative measures that are more appropriate, thereby providing an effective safeguard against any illegal excess in the exercise of administrative police powers.

3.2 The Impact of Civil Society Institutions in Strengthening the Balance between Security and Rights

Civil society institutions play a fundamental role in achieving a balance between security requirements and the protection of public rights and freedoms. They act as an intermediary between public authorities and society through monitoring, awareness-raising, and advocacy for fundamental rights. These institutions contribute to ensuring that administrative police authorities respect legal limits by providing legal advice and initiating legal proceedings when violations affecting freedoms occur. They also promote public awareness of the importance of respecting rights during the implementation of security measures through seminars, awareness campaigns, and advocacy efforts aimed at adopting policies that enhance security without undermining legally guaranteed freedoms.

Moreover, civil society institutions perform a consultative role in the development of public policies related to administrative policing by submitting legislative proposals and recommendations that promote a balance between maintaining security and safeguarding freedoms. They also contribute to building trust between citizens and public authorities by encouraging social dialogue and cooperation, thereby ensuring that administrative measures are fair, transparent, and non-discriminatory. In addition, these institutions contribute to training law enforcement authorities on respecting human rights standards and strengthening a culture of accountability and responsibility, which helps reduce the possibility of abuse of power and ensures that administrative policing is exercised within the framework of the rule of law and respect for human dignity.[11]

CONCLUSION

In conclusion, achieving an effective balance between administrative police powers and public freedoms constitutes one

of the fundamental pillars for consolidating the rule of law based on respect for rights and the achievement of justice. Although administrative police authorities perform an essential role in maintaining public order and ensuring the security and stability of society, the exercise of these powers must remain subject to the principle of legality and effective legal and judicial oversight in order to prevent any abuse or unjustified interference. A democratic State cannot be based solely on the preservation of security and public order; rather, it must also guarantee the protection of individual and collective freedoms. Therefore, maintaining a fair balance between security requirements and individual rights represents a key indicator of the effectiveness of the legal and administrative system.

In this context, there is a pressing need to strengthen the legal and regulatory framework governing administrative police authorities by establishing clear rules that define the scope of their intervention and ensure their submission to effective supervision by competent judicial and oversight bodies. Furthermore, promoting legal awareness among various actors, including public officials and citizens, contributes to developing a culture of respect for rights and freedoms and ensures that security measures remain consistent with the principles of the rule of law. The reconciliation between maintaining public order and safeguarding freedoms should not remain merely a theoretical principle; rather, it must be transformed into practical measures reflected in public policies and the daily functioning of State institutions.

To reinforce this balance, several measures may be recommended, including*:*

-Strengthening judicial oversight over the acts and decisions of administrative police authorities to ensure compliance with the principle of legality and prevent تجاوزs of their lawful powers*.*

-Establishing more precise legislative provisions defining the competences of administrative police authorities while setting clear limitations to prevent abuse of power*.*

-Enhancing the role of civil society institutions in monitoring administrative police activities and promoting principles of transparency and accountability*.*

-Providing effective legal mechanisms enabling individuals to challenge administrative decisions that unjustifiably affect their rights and freedoms*.*

-Promoting legal culture and raising awareness of the importance of balancing security requirements with respect for public freedoms, thereby ensuring the commitment of all parties to the principles of the rule of law and justice.

Marginalization

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