



التنظيم القانوني للضبط الإداري في التشريع الليبي والنظم المقارنة

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The legal organization of administrative control in Libyan legislation and comparative systems

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الملخص

إن فكرة الضبط الإداري شأنها شأن الأفكار والنظم القانونية التي تطورت بتطور المجتمع، وقد تزايدت أهميتها في ضوء اعتبارات عديدة تتسع مجالاتها يومياً، وتتطلب هيئات متخصصة قادرة على تحقيق تلك الأهداف المنوطة بهذا النشاط والمتمثلة في صيانة النظام العام وحمايته .

ويعتبر الضبط الإداري على وجه الخصوص بسلطاته المتعددة من أهم وسائل القانون الإداري ، ولذا فإن وظيفة الضبط الإداري تعتبر ضرورة لازمة لاستقرار وصيانة نظم الحياة الاجتماعية، فهي عصب السلطة العامة وأولى وظائفها. **الكلمات الدالة:** الضبط الإداري ، النظام العام، طبيعة الضبط ، النظم القانونية، التشريع .

Abstract

The idea of administrative control, like the ideas and legal systems that have evolved with the development of society, has increased in importance in light of many considerations whose scope expands daily, and requires specialized bodies capable of achieving the goals assigned to this activity, which are the maintenance and protection of public order.

Administrative control in particular, with its multiple powers, is considered one of the most important means of administrative law. Therefore, the function of administrative control is considered a necessary necessity for the stability and maintenance of the systems of social life, as it is the backbone of public authority and its first function.

Keywords: Administrative control, public order, nature of control, legal systems, legislation.

Introduction:

The idea of Administrative Control is founded on establishing a balance between exercising freedom and maintaining public order.¹ Most constitutions around the world concur on the text stating the necessity of guaranteeing individual freedoms. In fact, some of these constitutions go into detail and explain these freedoms. An example of this is the Constitution of the United Arab Emirates of 1971 AD, which devotes an entire chapter to it, "Chapter Three," entitled "Public Freedoms, Rights, and Duties," in which it stipulates the necessity of guaranteeing personal freedom... etc.

There is no doubt that the theory of Administrative Control is one of the general and well-known theories in the field of administrative law in general, and the importance of this theory in protecting the public order in the state, especially in the current era, is not hidden from everyone, due to the reliance on it primarily by the state in carrying out its main role in maintaining the security and safety of society and protecting the interests of individuals.²

The idea of Administrative Control has evolved, just as legal ideas and systems have evolved with the development of society and its transition from one stage to another. Its importance has increased and requires specialized bodies capable of achieving the objectives assigned to this activity, which are represented in maintaining and protecting the public order.

Significance of the Research:

The importance of the topic of Administrative Control lies in its being a constantly evolving topic, both locally and internationally. Administrative Control authorities and the means they use to achieve their various objectives are crucial to protecting the public order and its various components.

Research Problem:

The research problem lies in defining the concept of Administrative Control, distinguishing it from other similar legal systems, its role in preserving elements of public order in society, and the legal nature of control.

Research Methodology:

We will approach the research topic using a comparative analytical approach, examining legal texts in both Libya and Egypt, as well as jurisprudential trends and court rulings. We will also shed light on Libyan legislation as well as Egyptian legislation.

Research Plan:

First Section: The Meaning of Administrative Control

First Section: The Concept of Administrative Control

Section Two: The Nature of Administrative Control in Islamic Law

Second Section: The Nature of Administrative Control and Distinguishing It from Similar Systems

Section One: The Nature of Administrative Control

Section Two: Distinguishing Administrative Control from Other Similar Systems of Control.

¹ -A. Ibrahim Salem Al-Akhdar: "Public Freedoms and the Limits of Administrative Policing Procedures - A Comparative Analytical Study with Application to the Police," Master's Thesis, College of Security Graduate Studies, Tripoli, Libya, 2010, p. 52.

² - A. Raef Mohamed Labib: "Procedural Protection of the Environment," Master's Thesis, Faculty of Law, Menoufia University, 2008, p. 37.

First Requirement: The Meaning of Administrative Control

The subject of Administrative Control is important in Libyan and Egyptian legislation, and even in Islamic law, in preserving the environment and protecting it from pollution. This is embodied in a supervisory and preventive role that no contemporary legal system can achieve.¹

In Libya, Article 2 of Law No. 10 of 1992 on Security and Police stipulates: "It is the responsibility of citizens to report anything that affects the system in Libya or disrupts security and public order or exposes lives, honor, or property to danger."²

Article (206) of the Egyptian Constitution of 2014 stipulates that: "The police are a regular civil body in the service of the people, and its loyalty is to them. It guarantees citizens peace and security, and it ensures the preservation of public order and public morals. It is committed to the duties imposed on it by the Constitution and the law and to respecting human rights and basic freedoms. The state guarantees that members of the police force perform their duties, and the law regulates the guarantees that ensure this."³ Explaining the meaning of Administrative Control requires defining it from a linguistic, legislative, jurisprudential and judicial perspective.

Section One: The Concept of Administrative Control

First: Control in the Language:

In the language, control has several meanings or concepts. Controlling something means preserving it firmly. A "controller" man means firm.⁴ It is also said that control is the necessity of something and its confinement, and it does not leave it in anything⁵. It means specification in the jurisprudence, as written documentation stipulates, legally recording the incident means writing a report of it, so controlling something means its necessity and confinement, likewise rulings or perfection, meaning carrying out a certain work without deficiency or shortcoming, so controlling the country That is, to carry out its task without any defect or deficiency⁶. It also means restoring things to their normal state after they have been damaged or disturbed⁷. The word "dabatiya" is derived from the word "dabatiya," the singular of which is "dabit," and refers to the governor's soldiers charged with collecting money, maintaining security, arresting the accused, and bringing them before the competent authorities⁸. In the French language, the term "administrative police" is equivalent to administrative control, meaning the administrative police or the police. It also means the set of systems that maintain public order⁹. In English, the term corresponding to control is "Administrative Police" and it has several synonyms, including the organization of society with regard to its security, moral, and health affairs. It also means the police department, police, policemen, or police.¹⁰

Second: Administrative Control in Legislation:

What we note in this regard is that the legislation in most countries around the world, particularly in Egypt, Libya, and France, does not address a specific and definitive definition of administrative control. Rather, it addresses the

¹ - Dr. Naima Omar Abdullah: "The Role of the Libyan Administrative Judiciary in Achieving a Balance between Authority and Freedom in the Field of Administrative Control," op. cit., p. 104.

² - A. Khalifa Al-Farjani Khalifa: "Administrative Protection of the Marine Environment from Pollution - A Comparative Study," Master's Thesis, Faculty of Law, Alexandria University, 2013, p. 95.

³ - Article 206 of the 2014 Constitution of Egypt.

⁴ - Sheikh Imam Muhammad bin Abi Bakr Abdul Qadir Al-Razi: "Mukhtar Al-Sihah", 3rd ed., p. 400.

⁵ - "Lisan al-Arab", by Ibn Manzur, Vol. 9, p. 214

⁶ - "Lisan al-Arab," by Ibn Manzur, Volume 1, Part 2, Beirut Printing and Publishing House, Lebanon, 1956, p. 509.

⁷ - The Concise Dictionary, Arabic Language Academy, Cairo, 1st ed., 1980, p. 376.

⁸ - Louis Maalouf, Al-Munjid in Language and Media, 30th ed., Dar Al-Mashreq, Beirut, 1988, p. 445.

⁹ - Dictionary of Law, General Authority for Government Printing Affairs, Cairo, 1999, p. 475.

¹⁰ - Website, Arab Legal Information Network.

purposes of control. Even in this regard, it does not address all of its purposes clearly and precisely, but rather in a brief, introductory manner. Based on this, we will review the most important texts discussed in Egypt, Libya, and France.

1. Administrative Control in Egyptian Legislation:

If we examine the position of the Egyptian legislator, he does not address a specific and definitive definition of administrative control, as other legislation does. Rather, he addresses its purposes indirectly, but rather in a general manner, stating:

"The police force is responsible for maintaining public order, security, and morals, protecting lives, property, and property, and in particular preventing and controlling crimes. It is also responsible for ensuring peace of mind and security for citizens in all areas, and for implementing the duties imposed upon it by laws and regulations."¹

It is clear from examining the text that it did not specify the concept of administrative control, but rather addressed many purposes that came in vague terms. Consequently, the purposes of control were not clearly specified, and it was also criticized for repeating some purposes without justification.

2. Administrative Control in Libyan Legislation:

A review of the texts in Libyan legislation reveals that the Libyan legislator used the term "police" in Law No. 33 of 1962. This term was replaced by the term "security" pursuant to Law No. 118 of 1968, which repealed the first law. The Libyan legislator then replaced the term "security" with the term "police."², by issuing Law No. 6 of 1972³, Whereas we find in the term security used by the legislator in Law No. 118 of 1968 that it does not include the purposes of the administrative police, but rather a part of it. If administrative control originally means placing restrictions on the freedoms of individuals to achieve the public interest, then maintaining security aims to achieve one of the multiple objectives of public order.

As for the term police, despite its authenticity and the antiquity of the institution to which this word refers in the Arab countries, it does not give the technical meaning of the administrative control system at the present time. In addition, this term, which is currently used by the Libyan legislator, refers to a specific type of forces specialized in maintaining internal security, which is not the army entrusted with external defense, which exercises some powers of administrative control, and also in exceptional circumstances, such as in the case of declaring martial law.⁴

Libyan Security and Police Law No. 10 of 1992 states that: "The police are a regular civilian body affiliated with the General People's Committee for Justice, responsible for implementing plans related to local public security, maintaining Libya's security and public order, and protecting lives, honor, and property."⁵

The Libyan legislator has stipulated in several laws that the executive authority has the authority to exercise administrative control powers, including Law No. 56 of 1970 on the Protection of Morals in the Public Sphere, as well as Law No. 19 of 2010 on Combating Illegal Immigration.⁶, The judiciary in Libya has followed the same path as the Libyan legislator in the absence of a precise formulation of the definition of administrative control, but rather

¹ - Dr. Adel Al-Saeed Abu Al-Khair: "Administrative Police", Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2014, p. 79.

² -Dr. Muhammad Mukhtar Othman: "Legal Principles and Provisions of Popular Administration in Libya," Garyounis University Publications, Benghazi, Libya, p. 548.

³ - Dr. Subaih Bashir Maskuni: "Principles of Administrative Law," General Company for Publishing, Distribution and Advertising, Benghazi, 2nd ed., p. 231.

⁴ - See: Law No. 38 of 1974 of Libya regarding the use of armed forces to maintain internal security, Official Gazette Publications, Special Issue, 1974.

⁵ - Libyan Security and Police Law No. 10 of 1992, Official Gazette, Issue 28, Thirtieth Year.

⁶ - Legislation Code No. 10, Year 10, dated 6/15/2010, p. 400.

it has been satisfied with merely referring to what constitutes a breach of security and public order. The Libyan Supreme Court has ruled regarding the state's right to deport any foreigner it deems necessary to deport, considering that this is within the framework of its right to preserve its security, protect its entity, and protect its people and society from everything that harms it.¹

In another ruling, it indicated the administration's right to set conditions that must be taken into account in establishing dangerous, disturbing, or harmful to health establishments, and to determine areas according to what it deems appropriate for their locations to be established or managed, with the aim of preserving the safety, security, health, and comfort of citizens.²

The Libyan Municipalities Law issued in 1975 stipulates that: "Municipalities may form a municipal guard to implement the municipality's regulations, decisions and orders. The municipal guard's jurisdiction within the municipality's territorial scope is intended to be related to public health and public order. Hence, we find that the concept of administrative control or administrative police according to Libyan legislation refers to two meanings, the first organic and the second functional. The organic aspect of the police or police refers to the group of bodies, persons or agencies charged with control or police activity. As for the functional or material concept, it refers to the meaning of maintaining public order and security and the various objectives that this meaning entails."³

3.Administrative Control in French Legislation:

It should be noted that legislation does not define administrative control, but rather indicates its purposes. In France, Article 97 of the law issued on April 5, 1984, stipulates that the local police are responsible for maintaining good order, security, and public health.

Article 5 of the Decree of December 14, 1789 also stated that: "The municipal authorities are responsible for ensuring that the population enjoys the benefits of good order, especially cleanliness, health, and security in the streets, places, and public facilities".⁴

Among the French legislation that dealt with the purposes of administrative control are Articles 16 to 20 of Law 3 Brumaire of the Fourth Year of the Revolution, which stipulate the following: "The police were established to maintain public order, freedom, property, and the security of individuals. They are divided into administrative police and judicial police. The administrative police's purpose is to maintain order in every place and in every part of the public administration, and its primary goal is to prevent crimes."

The judicial police investigate crimes that the administrative police were unable to prevent, collect evidence, and hand over the perpetrators to the courts that the law has entrusted with punishing them.⁵

We find the equivalent of Article 97 of the French law issued on April 5, 1884, which states: "The objective of municipal control is good order and public health." In Algerian legislation, Article (3) of the Municipalities Law issued on January 27, 1977 and what was stipulated by Article (2212) of Law No. (142) issued on February 21, 1996,

¹ - Administrative Appeal No. 11/9, session of 5/16/1964, first year, first issue, p. 33, and also Administrative Appeal No. 26/6, session of 2/19/1966, prepared by Shahat Daif Al-Dijawi, a collection of legal principles decided by the Libyan Supreme Court in forty years (from its first establishment in 1953 to 1994), Administrative and Constitutional Judiciary, third group, p. 27.

² - Civil Appeal No. 51/20, Session of 3/30/1975, Supreme Court Journal, Twelfth Year, First Issue (October 1975), p. 36.

³ - Dr. Subaih Bashir Maskuni: "Principles of Administrative Law," previous reference, p. 232.

⁴ - Dr. Adel Al-Saeed Abu Al-Khair: "Administrative Police," previous reference, p. 79

⁵ -Adel Al-Saeed Abu Al-Khair, the previous reference, p. 79.

related to local communities, and where Article 75 of the Municipalities Law stipulated the following: “The head of the municipal council shall undertake¹, Maintaining public order and the safety of persons and property.

- Maintaining good order in all public places where people gather.
- Punishing any violation of public safety or any actions that violate it.
- Ensuring the cleanliness of buildings and the ease of movement on streets, squares, and public roads.
- Taking the necessary precautions and measures to combat and prevent infectious diseases.
- Eliminating harmful and harmful animals.
- Ensuring the cleanliness of consumer goods offered for sale.
- Ensuring the proper organization of funerals and cemeteries in accordance with customs and various religious rites, and working immediately to ensure that every deceased person is adequately shrouded and buried, without discrimination based on religion or belief.
- Ensuring compliance with building standards and regulations”.

As for the state law, Article 96 stipulates: “The governor is responsible for maintaining order, security, safety and public tranquillity.”²

The Egyptian legislator also stipulated in Law No. 159 of 1971, concerning the Police Authority, Article 3 of which states: "The Police Authority is responsible for maintaining public order, security, and morals...etc." We note from the position of the Libyan, Egyptian, French, and Algerian legislators that they did not address a specific and unequivocal definition of administrative control, but rather addressed the purposes only in a vague manner. This failure to clearly and unequivocally define the purposes of control can be attributed to the flexibility and relativity of the concept of public order. This clause varies according to the circumstances of time and place, with what is considered harmful to public order at one time not being so after a period of time. What is considered public order in one country may not be considered public order in another.³

Third: Definition of control in jurisprudence:

Although most jurisprudence uses the term administrative control, some have suggested using the term administrative police, claiming that there are many foreign terms borrowed into the Arabic language, and that there are non-Arabic terms mentioned in the Holy Quran, such as “sindas” and “istabraq.” On the one hand, the term administrative police have been used for a long time, to the point that it has become so commonly used now that it is impossible to use anything else to refer to it.

The use of the term administrative police instead of administrative control is inaccurate, as sound legal language requires the clear use of Arabic terms, on the one hand, and because analogy to the terms mentioned in the Holy Quran is an analogy with a difference, given that the language of the Holy Quran is its own language and cannot be used as an analogy.

Our professor Dr. Majid Al-Helou believes that⁴ it is better to use the term administrative control instead of the term administrative police, which has two meanings: one material and refers to the activity of the administrative police, and the other is the membership of the administrative police or administrative control body. In addition, the term

¹ - Dr. Daim Belkacem: “The Positive and Legal Public Order and Environmental Protection,” previous reference, p. 40.

² - Law No. 9 on Guardianship issued on April 7, 1990, Official Gazette No. 15 of 1990.

³ -Dr. Adnan Amr: “Principles of Administrative Law - Administrative Activity and Means”, 3rd ed., Maaref Establishment, 2004, p. 6.

⁴ -Dr. Majed Ragheb Al-Helou: “Environmental Protection Law in Light of Sharia,” previous reference, p. 78.

control is an Arabic term, unlike the term police, which is foreign and borrowed from European languages. However, given the use of the term police and the lack of knowledge among non-legal scholars of what is meant by administrative control, there is no objection to using the term administrative police, even if temporarily, until the intended meaning of administrative control becomes clear and its use becomes widespread. If the texts in French, Libyan and Egyptian legislation do not give a precise meaning to administrative control, but rather address its purposes in an unclear manner, then it is the role of jurisprudence to complete the deficiency, clarify the ambiguity, and fill the gap left by the legislator. However, jurists have not agreed on a unified definition that can be referred to, and in light of that, we will address the jurisprudential definitions of administrative control in Libyan, Egyptian and French jurisprudence.

1. Definition of administrative control in Libyan jurisprudence:

A section of Libyan jurisprudence defined administrative control as: "A measure of the administration necessary to control public order and to limit the freedoms of individuals in a way that does not lead to harm to others, such as maintaining public security, public health, and public tranquillity."¹

Some have defined it as: "The sum of the processes by which the administration intervenes to determine the freedoms and activities of individuals, in order to impose the control that social life requires on them".²

It was also defined through the laws on control powers that seek a specific goal, which is to maintain public order, and that administrative control has two meanings:

The first is organic: represented by the bodies, individuals, and agencies charged with enforcement activity.

The second is functional: represented by the concept of maintaining security and public order with its various objectives.

Accordingly, it is defined as an aspect of public administration activity intended to involve specific administrative bodies exercising powers that impose restrictions on individual freedoms in order to protect public order.³

Some of them defined it as: "A preventive system under which the administration organizes society in a preventive manner, monitoring the activity of individuals, studying the possibilities of disrupting the system, and working to prevent them before they occur."⁴

A jurisprudential opinion holds that it refers to administrative police: "It refers to the set of rules imposed by the public authority on individuals in their normal daily lives or for the exercise of a specific activity with the aim of maintaining public order."⁵

2- Definition of administrative control in Egyptian jurisprudence:

The definitions of administrative control in Egyptian jurisprudence have varied. Some have argued that the mission of administrative control is preventative and is limited to maintaining public order and preventing crimes. Therefore, it is defined as "the right of the administration to impose restrictions on individuals that limit their freedoms with the aim of protecting public order".⁶

¹ -Dr. Ashour Shawail: "Administrative Responsibility for the Actions and Decisions of Administrative Control - A Comparative Study", 1st ed., Benghazi, Garyounis University Publications, 1997, p. 85.

² - Dr. Khaled Abdel Aziz Arim: "Libyan Administrative Law," Dar Sader, Beirut, (n.d.), p. 367.

³ - Dr. Subaih Bashir Maskuni: "Principles of Libyan Administrative Law," previous reference, p. 230.

⁴ - Dr. Muhammad Mukhtar Othman: "Principles and Legal Provisions of Popular Administration," previous reference, p. 545.

⁵ -Dr. Sayed Muhammad Madani: "Libyan Administrative Law," Dar Al-Nahda Al-Arabiya, Cairo, (n.d.), p. 348.

⁶ - Dr. Suleiman Muhammad Al-Tamawi: "A Brief Introduction to Administrative Law - A Comparative Study," Dar Al-Fikr Al-Arabi, 1995, p. 539.

Some have argued that public rights and freedoms are not absolute, but are restricted by not harming the rights and freedoms of others on the one hand, and by not wasting the general rules upon which social organization is based on the other hand. Therefore, this opinion defines administrative control as: "A set of orders, prohibitions, and binding directives imposed by the public authority on individuals for the purpose of organizing their public freedoms or on the occasion of their practicing a specific activity with the aim of maintaining public order in society" ¹.

Some jurisprudence considers it as: a set of measures and procedures taken by the administration that represent a restriction on the freedoms of individuals with the aim of regulating these freedoms and preserving and protecting public order ².

Dr. Muhammad Rifat Abdul Wahab believes that what is meant by precision are restrictions and controls on the activities and freedoms of individuals to regulate their practice of their activities and freedoms, with the aim of preserving public order in society ³.

Dr. Majed Ragheb Al-Helou believes that administrative control or administrative police ⁴: "It is one of the most important functions of administration, which is to maintain public order in public places by issuing regulatory and individual decisions and using physical force, with what follows in terms of imposing restrictions on individual freedoms required for the regularity of life in society" ⁵.

3. Administrative control in French jurisprudence:

We mention some definitions provided by French jurisprudence, including the jurist "**Hauriou**," who defined control as: "the sovereignty of order and peace through the preventive use of the law" ⁶, it is an expanded definition of administrative control that includes almost all aspects of administrative activity.

Professor "**Rivero**" defined administrative control as: "A group of administrative interventions that impose on free individual activity the discipline required by life in society, within the framework of the system drawn up for it by the legislator" ⁷.

Professor "**Peiser**" defined control as: "the restrictions and procedures imposed by the administrative authority on the rights and freedoms of individuals to maintain public order in accordance with the provisions of the laws" ⁸.

Professor "**Waline**" defines it as a set of regulatory rules imposed by the public authority to regulate individual activity and achieve the public interest ⁹.

After we have completed our definition of the views of jurists in Egypt, Libya, and France, it becomes clear that the definitions have varied and differed according to the perspective of each jurist. It can be said that administrative control is a preventative administrative activity exercised by the competent executive authority with the aim of

1 - Dr. Ta'ima Al-Jarf: "Administrative Law and General Principles in the Organization and Activity of Administrative Authorities," Cairo, Dar Al-Nahda Al-Arabiya, 1978, p. 487.

2 - Dr. Abdel Raouf Hashem Basyouni: "Administrative Control Theory," Dar Al Fikr Al Jami'i, Alexandria, 2007, p. 24.

3 - Dr. Muhammad Rifat Abd al-Wahhab: "The General Theory of Administrative Law," Dar al-Jamia al-Jadida, Alexandria, 2012, p. 204.

4 - Dr. Majed Ragheb Al-Helou: "Environmental Protection Law," previous reference, p. 86.

5 - Dr. Majed Al-Helou, previous reference, p. 87.

6 - Dr. Mamdouh Abdel Hamid Abdel Muttalib: "Administrative Control Powers in Exceptional Circumstances," PhD Thesis in Law, Cairo University, 1991, p. 24.

7 - Dr. Magdy Fathallah: "The Effectiveness of Police Officers' Performance," (n.d.), 2002, p. 24.

8 - Dr. Ashour Shawail: "Administration's Responsibility for the Actions and Decisions of Administrative Control," previous reference, p. 92.

9 - A. Nisreen Hilal Abdul Ghani: "Environmental Administrative Control, a Comparative Analytical Study," Master's Thesis in Law, University of Benghazi, 2015, p. 13.

regulating the rights and freedoms of individuals, with the goal of maintaining public order and under judicial oversight.

Section Two: The Nature of Administrative Control in Islamic Law:

Muslim jurists defined administrative control as meaning Hisbah. Al-Mawardi and Abu Ya'la defined it as: "enjoining what is right if it is apparent that it is abandoned and forbidding what is wrong if it is apparent that it is done." Many jurists adopted this definition, including Ibn Taymiyyah, Imam Abu Hamid al-Ghazali, and Ibn Qayyim al-Jawziyya. Ibn Khaldun also defined it ¹, It is: "A religious duty of enjoining good and forbidding evil, which is an obligation on the one in charge of the affairs of Muslims. He appoints for this whomever he deems worthy of it, and it is obligatory upon him. He appoints helpers for this, searches for evil, and punishes and disciplines accordingly on the roads. He prevents porters and ship owners from overloading, and orders the owners of buildings that are about to collapse to demolish them and remove any harm that is expected from them."

This definition is the closest definition to indicating the concept of Islamic administrative control ², This is for the following reasons:

1- He made the Hisbah (control) a job, even though he described it by its purpose, which is the rectification of the world on the basis of religion. The expression "job" in the sense of a specific service is more accurate than the expression "governance" ³.

Because guardianship is a power granted to a person that distinguishes him from others and he exercises it over others. The rule in Islam is that preventing corruption is the responsibility of all Muslims. Making Hisbah a guardianship puts us in difficulty, as the permission of the Imam is required to exercise it. The Imam is the one who holds all the powers in his hand, and no one may exercise Hisbah unless the Imam authorizes him. The general rule is that any Muslim who sees an evil is legally obligated to exercise Hisbah, whether the Imam gives permission or not. This qualification is what ensures the protection of the environment, which determines the ABCs of protection, including the participation of individuals in preventing pollution ⁴.

2. In Ibn Khaldun's definition, administrative control is an obligation imposed on the head of state, who exercises it himself or delegates it to someone else. In this part, there is agreement between administrative control in positive law and Hisbah in the Islamic system. In France, custom has consistently permitted the authority of administrative control to the head of state. He is permitted to legislate the means that would restore security and order and preserve public health and tranquility, even if these means are not mentioned in the laws. This is what the French State Council confirmed in its ruling issued in August 1919 ⁵, in Islam, the second Caliph of the Muslims, Omar bin Al-Khattab, may God be pleased with him, used to personally supervise the Hisbah (control), as he used to oversee the markets, monitor the scales, and order the removal of harmful things from the road. Imam Malik narrated in Al-Mudawwana (that Omar bin Al-Khattab used to throw adulterated milk on the ground as a lesson to his companion ⁶.

¹ -Abd al-Rahman Ibn Khaldun: "Introduction to Ibn Khaldun", 1970 AD, Vol. 3, p. 2001

² -Dr. Daoud Abdel Razek El-Baz: "Principles of Administrative Law in Islamic Jurisprudence," Dar Al-Nahda Al-Arabiya, 1996, p. 224.

³ -Ibn al-Qayyim: "The Wise Methods of Islamic Politics," edited by Muhammad Jamil Ghazi, Al-Madani Library, Jeddah, p. 318.

⁴ -Dr. Daoud Abdel Razek El-Baz: "Protecting Public Tranquility: Addressing the Contemporary Problem of Noise in France and Egypt," a Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 1997, p. 81.

⁵ -Dr. Aziza Al-Sharif: "Studies in the Legal Regulation of Regulatory Activity," Dar Al-Nahda Al-Arabiya, Cairo, 1989, p. 83.

¹. We note in Ibn Khaldun's definition of Hisbah in the phrase "and the assistants are taken" referring to the administrative control body that assists the president, such as the minister, mayor, and governor. Omar bin Al-Khattab appointed Abdullah bin Uqba to oversee the markets, inspect the weights and measures, and prevent fraud.

3. Also, in Ibn Khaldun's definition of Hisbah, there is a reference to the special administrative control that aims to protect the public interest in a specific aspect of the types of individual activity with the intention of achieving the public interest...and the phrase "preventing harassment on the roads" includes the special control of dangerous facilities, those that are harmful to health and disturb peace.

The legal basis for Hisbah:

Hisbah finds its legal basis in the Almighty's saying: {And let there be among you a group inviting to what is good, enjoining what is right and forbidding what is wrong. And those will be the successful}², The verse contains an explicit command to enjoin good and forbid evil, using the phrase "let it be," which is a command that requires obligation ³.

The basis of Hisbah is also found in the Almighty's saying: {You are the best nation produced for mankind. You enjoin what is right and forbid what is wrong and believe in Allah.} ⁴.

In this verse, God Almighty links the goodness and faith of the nation to their command to do good and forbid evil. Belief in God is the first duty of the Muslim, and nothing is paired with it except what is similar to it in rank, that is, the rank of obligation ⁵.

After we have explained the basis of Hisbah in the Qur'an, we will explain its basis in the sayings of the Messenger, may God bless him and grant him peace, where he said, "Whoever among you sees an evil, let him change it with his hand. If he is unable to do so, then with his tongue. If he is unable to do so, then with his heart, and that is the weakest of faith." ⁶

And also in his saying, may God's prayers and peace be upon him: "By the One in Whose hand is my soul, you must enjoin what is right and forbid what is wrong, or God will soon send a punishment upon you from Him, and then you will call upon Him but He will not answer you." ⁷

And he, peace and blessings be upon him, took charge of the calculations himself by being the preacher, the warner, and the guide in their religion and their worldly life. So if he found a matter outside of the matters of the Sharia, or found in it a situation for a sermon or a place to put a text or clarify a Sharia, he carried it out through an action or behaviour, and this action or statement becomes a Sunnah that the Muslims follow and becomes a source of legislation ⁸.

The Messenger, may God bless him and grant him peace, did not limit the accountability to himself ⁹; After the conquest of Mecca, Sa'id ibn al-'As was appointed to oversee the market. The Hisbah system continued after the death of the Prophet (peace and blessings be upon him), and was assumed by the Rightly-Guided Caliphs after him.

¹ -Ibn Farhun Al-Maliki: "Insight into the Rulers", Vol. 2, Dar Al-Kotob Al-Ilmiyyah, Beirut, 1st ed., 1995, p. 220.

² - Surah Al Imran: Verse (104).

³ - Ibn Kathir: "Interpretation of the Holy Qur'an," Vol. 1, p. 390

⁴ -Surah Al Imran: Verse (110).

⁵ - Muhammad Salim Al-Awa, The Political System of the Islamic State, Modern Egyptian Office, Cairo, 1983, p. 169.

⁶ -Sahih Muslim, Hadith No. 49, Book of Faith, Chapter: Forbidding evil is part of faith, Dar Al-Salam Publications, Cairo, 1996.

⁷ - Imam Al-Mundhiri, Al-Targhib wa Al-Tarhib, Part Three, Encouragement for the One Who Enjoins Good, p. 169.

⁸ - Dr. Hamdi Attia Mustafa: "Environmental Protection in the Positive and Islamic Legal System," previous reference, p. 438.

⁹ -(Dr. Munib Muhammad Rabie, Guarantees of Freedom in the Face of Administrative Control Authorities, PhD Thesis, Law, Ain Shams University, 1981, p. 492.

While Hisbah was originally a duty for every Muslim, when people became unable to perform it, the caliphs and Muslim governors appointed someone to carry it out, the muhtasib. Hisbah became a general function or authority similar to that of the ordinary judiciary and the grievances department. The muhtasib had powers that enabled him to carry out his duties, and he had assistants to assist him. The jurisdiction of the Hisbah differs from the jurisdiction of the ordinary judiciary and the jurisdiction of the judiciary of grievances. The Muhtasib does not have the right to deal with civil disputes such as contracts, transactions, and demands for rights that require scrutiny of evidence, hearing witnesses, verification, and confirmation. However, when he rules, it is only in apparent disputes that require evidence, such as disciplining someone who publicly commits a sin or violates the usual manners of Muslims. His role is closer to the urgent judiciary that rules according to apparent evidence. However, the function of the Muhtasib is close to the work of the police and security, such as preventing harassment in the streets and protecting markets from cheats and manipulators ¹.

The second requirement: the nature of administrative control and distinguishing it from what is similar to it:

In this section, we study the position of jurisprudence on the nature of administrative control, whether it is of a neutral legal nature or a political nature, and as an authority of the state. Then we address administrative control and other similar systems.

Section One: The Nature of Administrative Control

We will explain the views of Islamic jurisprudence regarding the nature of control as follows:

First: The political nature of administrative control:

Proponents of this approach believe that administrative control has a political function, representing a manifestation of state sovereignty, which the state uses to defend its existence and impose its will.

A trend in jurisprudence sees that the state created control for the purpose of protecting it and preserving its existence. The statement that control protects the public order in society is a statement that hides behind it the true goal that the control authority performs, which is to protect the authority and the rulers, which distances the control authority from being described as neutral ².

Some people think that ³, Public order is a political concept linked to the system of government, as the scientific view of this subject is based on the fact that the activity of the administration in any society and under the shadow of any political activity in its essence serves the philosophy of government and the social and political purposes and goals, and the authority of control is not devoid of the political character, so public order in its reality and essence is a political idea, so if public order appears to be security in the streets, then in reality it is the security that the ruling authority feels, and even security in the streets itself is nothing but an aspect of the political security that the rulers seek ⁴.

The French jurist, Giulio Pascoe, is credited with highlighting the political aspect of the control function in police states, even though he overlooked the other side of the control function, which is the traditional side that aims to

¹ -See our professor Dr. Muhammad Rifat Abd al-Wahhab: "Principles of Administrative Judiciary," Dar al-Jamia al-Jadida, Alexandria, 2013, pp. 334-335.

² -Dr. Abdel Raouf Hashem Basyouni: "The Theory of Administrative Control in Contemporary Positive Systems and Islamic Law," previous reference, p. 30.

³ -Dr. Hassanein Jamil: "Human Rights and Criminal Law," Publications of Legal and Sharia Research and Studies, (n.d.), p. 57.

⁴ -Dr. Ashour Shawail: "Administration's Responsibility for the Actions and Decisions of Administrative Control," previous reference, p. 106.

maintain public security, public peace, and public health, meaning that he neglected the basic function of administrative control, which is the preventive function ¹.

It can be said that administrative control is of a political nature from the Libyan legislator's side, according to the text of Article 10 of Law No. 10 of 1992, which states that the mission of the police force is to maintain Libya's security and public order and to protect lives, honor, and property. Maintaining Libya's security is one of the priorities of the police force, as it is the first security mission that falls under maintaining public order.

But the nature of the political system in Libya rejects the claim that administrative control is of a purely political nature on the basis of:

- The idea of administrative control operating within a political framework may obscure the existence of a legal state, thus negating the existence of specific legal rules.

- The function of administrative control has a political character, an idea that includes dangerous dimensions that give the theory of sovereign acts a wide scope, according to which the image of absolute rule is given legitimacy ².

Egyptian jurisprudence ³, The idea that administrative control is political in nature is criticized from several perspectives:

- The claim that administrative control is political in nature cannot be accepted in its entirety, because such a claim would mean restricting freedoms in a way that undermines and destroys them, and giving the ruling authorities free rein to tamper with individuals' capabilities as they please. This would mean the decline of democracy and the dominance of individual rule in all countries without exception. Furthermore, the claim that administrative control is political in nature could lead to the removal of control acts from judicial oversight under the pretext that they are acts of sovereignty.⁴

- Public order is the expression of foundations, concepts, beliefs, and their interests. The notion that it has an inherently political character cannot be accepted, as it does not reflect the security of political authority. This is a statement that only applies to a police state, which cannot last long. What the regulatory authority must consider is not how to maintain public order, but how to allow the exercise of freedom without disrupting order. Therefore, the administration possesses regulatory authority over freedom.

Therefore, the French State Council ruled that ⁵: "Although the ringing of church bells is disturbing to peace, the administration does not have the power to prohibit the ringing of bells completely. Rather, it can only specify a period that the ringing may not exceed and prevent it at inappropriate times, such as the early morning hours."

If we do not want the authorities to deviate from their goal, we must support democracy as the fence that protects freedoms and emphasize the independence of the judiciary.

Second: The legal nature of administrative control:

The proponents of this trend believe that the police are a neutral legal authority that is exercised within the limits of the law and aims to protect the public order in the state. Thus, it is not a political authority unless it deviates from its recognized goals and is used to protect the political authority instead of protecting the public order ¹.

¹ -Dr. Abdel Raouf Hashem Basyouni: "Administrative Control Theory," previous reference, pp. 30-31.

² -Dr. Naima Omar Abdullah: "The Role of the Libyan Administrative Judiciary in Achieving a Balance between Authority and Freedom in the Field of Administrative Control," previous reference, p. 120.

³ -Dr. Muhammad Muhammad Badran: "The Special Nature of Administrative Control and the Legal Implications Thereof," Dar Al Nahda Al Arabiya, Cairo, 1991, p. 133.

⁴ -Dr. Abdel Raouf Hashem Basyouni: "Administrative Control Theory," previous reference, p. 31.

⁵ -C. E. 26 Dec. 1930, Abbe Tesseire, Rec. Lebon p. 1114. Quoted from Dr. Abdel Raouf Hashem, the previous reference, p. 31.

According to this trend, administrative control is considered a neutral administrative authority that is exercised within the scope of administrative work as one of the activities of the administrative function within the limits of the law, and it does not turn into a political function unless it deviates in the use of its powers and is linked to the system of government ², This means that the administrative control function is one of the administrative activities assigned to the executive authority, and aims to protect public order in the state. Therefore, its mission is a neutral administrative one, exercising its powers within the limits of the law and subject to judicial oversight to ensure the validity of its work.

Saying otherwise puts us in front of two matters: the first is the absence of the idea of the public interest, which is nothing but a legal idea in its content; and the second matter is that the administrative judge becomes in the service of the system, and he is the one who must be in the service of the law ³.

Since freedom is the goal and objective of public order, the administrative control system in Libya is based directly and decisively on the Freedom Promotion Law. Article 35 of it states that: "The provisions of this law are fundamental and nothing may be issued that contradicts them. Any legislation that conflicts with them shall be amended."

This is scientifically confirmed by the supervision imposed by the Libyan administrative judiciary on administrative decisions, including disciplinary decisions related to public order. Among its rulings in this regard is the ruling of the Supreme Court (Administrative Chamber), which states that "every system whose foundation has been laid by the constitution and whose rules have been established by law is a system that is subject by its nature, even if it is an exceptional system, to the principle of the rule of law ⁴.

The Supreme Administrative Court in Egypt has confirmed that the basis for taking appropriate administrative action is the presence of an imminent danger to public health or public security, and the control agencies specialize in assessing the danger arising from the actual situation that has become. With it, to intervene to confront it, there must be specific facts that would indicate, in a logical assessment of matters, that there is a danger threatening public security, and that taking precautions against it requires intervention from these agencies with the appropriate disciplinary procedure" ⁵.

Third: Control as a state authority:

There is no doubt that the control is considered a public authority in the administrative sense, as it contains the elements and components of public authority. However, the question arises as to whether the control can be considered an authority alongside the basic legislative, executive and judicial authorities of the state.

Perhaps the restrictions imposed by administrative control on public freedoms, and the methods it uses, some of which include coercion, compulsion and force, and the protection and maintenance it aims to maintain in the public order in the state, which represents the vital nerve of the stability of society, and the feeling of the ruling authority of

¹ -Dr. Adel Al-Saeed Abu Al-Khair: "Administrative Control and Its Limits," Egyptian General Book Authority, 1995, p. 94.

² -Dr. Muhammad Al-Wakil: "The State of Emergency and Administrative Control Powers," Dar Al-Nahda Al-Arabiya, Cairo, Second Edition, 2003, p. 17.

³ -Dr. Abdel-Aleem Abdel-Majeed Mashraf: "The Role of Administrative Control Authorities in Achieving Public Order and Its Impact on Public Freedoms," a Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 13.

⁴ -Administrative Appeal 1/19Q, Session 6/10/1972, Libyan Supreme Court Magazine, Eighth Year, Fourth Issue, p. 10.

⁵ -See: Supreme Administrative Court ruling in Appeal No. 6008 of 44 Q, Session 12/26/2001 AD, Technical Office 47, p. 247.

security and peace under its bodies, made some of the comparative jurisprudence see it as an authority of the state ¹, In addition to the three existing authorities in the state, but according to the structure of the political system in Libya and Egypt, the administrative control authorities cannot be viewed as having become equivalent to the executive, legislative, or judicial authorities, despite the fact that these authorities involve, in some aspects, control activity.

Based on what has been presented about the nature of administrative control, it can be said that administrative control is nothing but a tool of the executive authority that it uses to maintain public order, which is a social necessity in the first place, in order to ensure stability in society for the happiness of all its members.

After explaining the nature of administrative control, we will address the characteristics of administrative control, as administrative control is characterised by a set of characteristics, which are:

1- The singular attribute:

Administrative control is, in all cases, a procedure undertaken by the administrative authority unilaterally, and aims to achieve public order. There is no room to talk about the will of the individual or individuals and their role in this field until the administrative control works produce their legal effects. Accordingly, the individual's position regarding the administrative control works is a position of compliance and submission within the framework of what is permitted by the law ², Control is a legal and legitimate process governed by legal principles and rules to which the executive authority is subject in carrying out its activities. The most important of these principles is respect for the principle of legality, so the administration does not exceed the limits set by the law to exercise this function. At the forefront of these limits is the reason, goal and purpose of the control process, which is to protect the public order ³.

2- The protective feature:

Administrative control has a preventive nature that always seeks to ward off danger before it befalls individuals. This is not arbitrary and restricts individual freedom, such as the administration withdrawing a fishing license from an individual because it saw that there is a danger that would result in the continuation of this meaning of the license. The administration aims behind this to prevent risks that might result from not respecting this prohibition or danger. The purpose of administrative control is highlighted here, which is to closely monitor the activity of individuals in order to prevent harm to the security of society and the safety of its members, by practicing a guiding activity for individuals on how to exercise individual rights and freedom ⁴, the administration has discretionary power to exercise control measures. When the administrative control authorities estimate that an action results in a certain danger, they must intervene before it occurs in order to maintain public order, such as seizing noise-generating equipment to combat noise pollution when it exceeds a reasonable limit.

What can be said in this regard is that if the state, in order to preserve the individual freedoms of individuals, restricts administrative actions with a set of procedures so that these actions are subject to the principle of legality and in accordance with the law, then it is obligated to grant the regulatory authorities a degree of freedom in order to preserve public order. When the administration exercises its regulatory activity, it must adhere to the limits drawn for

¹ -Dr. Naima Omar Abdullah: "The Role of the Libyan Administrative Judiciary in Achieving a Balance between Authority and Freedom in the Field of Administrative Control," previous reference, p. 124.

² -Dr. Ammar Boudiaf: "A Brief Introduction to Administrative Law", Dar Rayhana Publishing House, (n.d.), p. 200.

³ -A. Nisreen Hilal Abdel Ghani: "Environmental Administrative Control," previous reference, p. 36.

⁴ -Dr. Muhammad Abdo Imam: "The Right to Food Safety from Pollution in Environmental Legislation," New University Publishing House, Alexandria, 2004, p. 284.

it by the law in this regard, and at the forefront of these are the goal and the reason. The goal is to protect the public order, and the reason is any disturbance or breach of the public order or any real danger that threatens it ¹.

3- The characteristic of social necessity:

Considering that administrative control is a social necessity, there cannot be an organized society without control, because that aims to protect the public order in society. At the same time, the administrative control authorities in the field of environmental protection must be bound by freedoms by not interfering except in a way that allows them to be practiced legally. There cannot be absolute freedoms because their release means the emergence of chaos and the exposure of social peace to serious dangers ².

Section Two: Distinguishing between administrative control and other similar control systems:

The concept of some other systems is close to the concept of administrative control to the point that it may reach the point of similarity and confusion in the minds. We see that administrative control and legislative control both place restrictions on the freedoms of individuals. We also find that administrative control and judicial control each aim to achieve public order. Some employees also practice both functions together, which is called dual employment. Therefore, distinguishing between administrative control and legislative control, administrative control and judicial control may raise a number of problems that must be studied. In this regard, there is a similarity between administrative control and public services, as each of them performs a public service to the public and uses public authority methods in carrying out its activities.

First: Administrative control and legislative control:

If administrative control means the right of the control authority to impose restrictions and controls on individuals' exercise of their freedoms in order to protect public order.³

Legislative control is the set of laws issued by the legislative authority whose subject is to limit the scope of exercising some individual freedoms. The source of the restriction is the legislative authority.

Despite the clarity in the distinction between administrative control and legislative control, we note that there are cases of connection between control on the one hand and cases of difference on the other hand.

A- Points of agreement between administrative control and legislative control:

Administrative control and legislative control are complementary in achieving public order and preventing crime. Although administrative control is distinguished by the fact that it performs a preventive task limited to imposing restrictions and controls on individuals exercising their freedoms in order to protect public order ⁴, Legislative control also performs a preventive function by issuing many deterrent laws and legislation that aim to maintain public order.

B- The differences between administrative control and legislative control:

¹ -Dr. Suleiman Mansour Al-Habouni: "The Right to the Environment and the Obligation to Protect It in Contemporary Constitutional Systems," PhD thesis, Faculty of Law, Mansoura University, 2014, p. 210.

² -A. Lazhar Tarshi: "Environmental Administrative Control Mechanisms," Master's Thesis, Faculty of Law and Political Science, Mohamed Khider University, Biskra, Algeria, 2014, p. 29.

³ -Dr. Abdel Ghani Basyouni Abdullah: "Administrative Law - A Comparative Study," Dar Al Maaref, Alexandria, Egypt, 1991, p. 378.

⁴ -Dr. Maher Gabr Nasr: "General Principles of Administrative Law, Book One," Mansoura University, Al-Galaa Library, 2002, p. 361.

Although both systems agree in their purpose in that they both aim to protect individual and collective rights and defend public order, they differ in that legislative control is more comprehensive and general than administrative control, because it aims to protect society as a whole, while administrative control aims to protect public order in society¹.

They also differ in terms of authority. Administrative control is exercised by the executive authority and its representatives in the regions and is represented by control regulations. Legislative control is exercised by Parliament or the legislative authority and is represented by the laws set forth by the legislator that regulate the public freedoms of individuals by setting the general rules required by this regulation ².

Second: Administrative control and judicial control:

Administrative control is distinguished from judicial control in that it is a preventive or deterrent activity against the disruption or continuation of disruption of public order, whether this disruption is composed of crimes punishable by law or not, while judicial control is a remedial activity, i.e. subsequent to crimes, aiming to investigate them and collect the necessary evidence to investigate them, as well as track down their perpetrators, bring them to trial, and impose punishment on them ³, The distinction between administrative control and judicial control must be based on the nature of the job and the mission of each of them, as it is not possible to distinguish between the two ideas on the basis of the source, as judicial control officers may be considered in many cases to be public administration officers ⁴.

The Libyan legislator stated in Article 13 of the Code of Criminal Procedure that “the police officers, including officers, non-commissioned officers, and soldiers of at least the rank of sergeant, prison officers, customs guards, municipal guards, and all other employees authorized to exercise the powers of judicial police officers by virtue of a law or decree are considered to be judicial police officers in their jurisdiction.”⁵

It is noted that this is limited to the Libyan Supreme Court, which ruled that “the search of homes, except in cases of flagrante delicto, by police who are not judicial police officers as stipulated in Article 13 of the Libyan Code of Criminal Procedure, and without permission from the Public Prosecution, is invalid ⁶.

In Egypt, most administrative police officers have judicial control authority, such as police officers, police sergeants, assistants, police station chiefs, and guard chiefs ⁷.

The traffic policeman also regulates traffic on the streets, which is considered an administrative and enforcement act. He also writes up reports on violations that may be committed by individuals who do not comply with traffic regulations and instructions, which is considered a judicial enforcement act ¹.

¹ -Dr. Anwar Ahmed Raslan, “Concise Administrative Law,” (n.d.), Cairo, 4th ed., 2006, p. 287.

² -Dr. Ibrahim Muhammad Ali: “The Mediator in Administrative Law,” (Administrative Activity) (n.d.), 1999, p. 29.

³ -See in this regard: Dr. Ramadan Muhammad Battikh: “The Mediator in Administrative Law,” Dar Al Nahda Al Arabiya, Cairo, 1997, p. 733. Dr. I’ad Hamoud: “A Brief Introduction to Administrative Law,” A Comparative Study, 2004, p. 273.

⁴ -Dr. Issa bin Saad Al-Naimi: “Administrative Control: Its Powers and Limits in the State of Qatar,” PhD thesis in Law, Cairo University, 2009, p. 34.

⁵ -Dr. Mamoun Muhammad Salama: “Criminal Procedures in Libyan Legislation - Part 1”, Publications of Garyounis University, Benghazi - Libya, (n.d.), p. 271.

⁶ -Session of 1/25/1956 AD, Libyan Supreme Court Magazine, Part One, p. 271.

⁷ -Article (23) of the Egyptian Criminal Procedure Code.

The Supreme Administrative Court in Egypt confirmed that “administrative control measures involve an infringement on the freedoms of individuals, which requires proof of the factual situation justifying their adoption.”²

There are some judicial police officers, such as members of the Public Prosecution in Egypt and France, and also in Libya, who have no business with administrative control. Conversely, administrative police officers, such as the President of the Republic, the Prime Minister, and the Minister of the Interior in Egypt, France, and Libya, do not have jurisdiction over judicial control ³.

A- The differences between administrative control and judicial control:

Although the maintenance of public order is a common goal for both administrative and judicial control, there are fundamental differences between them. In terms of authority, the administrative control function is carried out by the executive authority with its employees and administrative bodies, according to the administrative organizational structure, while judicial control is represented by the judiciary, members of the Public Prosecution, and some administrative employees who are granted by law the authority of judicial control and exercise their powers under the supervision of the work of the judicial authority.⁴

Administrative control differs from judicial control ⁵, that the decisions issued by the administrative control are administrative decisions and therefore they are subject to the supervision of the administrative judiciary for cancellation and compensation ⁶, This is what was confirmed by the Administrative Court in Egypt, where it ruled that the actions performed by police officers are either carried out by them in their capacity as administrative police officers, such as measures to maintain public order and security and prevent crimes, or they are carried out by them in their capacity as judicial police officers, in which case their actions are considered judicial actions, which are related to uncovering crimes and gathering evidence leading to the investigation of the case. Moreover, in carrying out these actions, they are only carrying them out on behalf of the Public Prosecution and under its management... Their actions in the first case are subject to the supervision of the Administrative Court in terms of requesting cancellation or compensation, while in the second case, it is outside the court’s jurisdiction to request the cancellation of any judicial action or compensation for it ⁷.

¹ -Dr. Muhammad Salah Abd al-Badie: “The Mediator in Administrative Law,” previous reference, p. 17.

² -Supreme Administrative Court, Appeal No. 3253 of 32 Q, dated 4/11/1987 AD, Technical Office 32, Part Two, p. 1108.

³ - Dr. Helmy Abdel Gawad Al-Daouqi: “Judicial Oversight of the Internal Legitimacy of Administrative Control Acts,” PhD Thesis in Law, Cairo University, 1987, p. 40.

⁴ -Dr. Ihab Fouad Mahmoud Al-Hijawi: “The Role of Judicial and Administrative Control Authorities in Implementing the Egyptian Environmental Protection Law,” A Comparative Study, PhD Thesis in Environmental Sciences, Department of Economics, Law, and Administrative Development, Institute of Environmental Studies and Research, Ain Shams University, 2008, p. 64

⁵ -The Egyptian Administrative Court has decided that “employees appointed by the Minister of Interior from among the Ministry of Interior employees and others shall have the status of judicial police officers...”. Administrative Court in Appeal No. 46266 of 66Q, Session 6-26-2012, East Laws Network.

⁶ -Dr. Abdullah Jad al-Rab Ahmad: “Environmental Protection from Pollution in Administrative Law and Islamic Jurisprudence,” op. cit., p. 381.

⁷ -Administrative Court ruling in case No. 469 of 5 Q, issued on 12/4/1955, State Council Rulings Collection, Tenth Year, Clause 172, p. 60.

As for the decisions issued in accordance with the judicial control function, they are considered judicial decisions and are therefore not subject to appeal for cancellation or compensation before the administrative judiciary courts ¹.

Administrative control differs from judicial control in terms of objective; administrative control aims to protect the public order in society with its various connotations of public security, public health and public tranquility. The authority of administrative control seeks to protect society from every act that may cause harm to it, whether these acts are crimes or not, while judicial control aims to maintain public order through deterrence or punishment by imposing penalties on anyone who commits a crime that disturbs public order. Accordingly, the task of administrative control is preventive, while that of judicial control is therapeutic ².

Accordingly, the function of administrative control is considered to be broader in scope than the function of judicial control, as the function of administrative control includes all means that aim to prevent disruption of public order even if the act does not constitute a crime according to the Penal Code, while the function of judicial control does not intervene unless the actions attributed to individuals constitute a crime according to the law ³.

B- The effects of the distinction between administrative control and judicial control:

There is a practical benefit in distinguishing between administrative and judicial control, as the distinction between them is based on the principle of separating the jurisdiction of the administrative and ordinary judiciary. Administrative control is related to the activity of the executive authority, while judicial control is related to the exercise of the jurisdiction of the judicial authority, and this leads to two results:

- 1- Judicial control acts are considered judicial acts, and disputes related to them fall within the jurisdiction of the ordinary judiciary and are not subject to appeal for cancellation or suspension of implementation. As for administrative control acts, "individual or regulatory," they are considered administrative decisions, and appeal for cancellation and compensation falls within the jurisdiction of the administrative judiciary ⁴.
- 2- Regarding the rules of liability, the general rule is that administrative control decisions are considered administrative decisions and therefore they impose the state's liability for the damages that befall citizens as a result of them ⁵. As for judicial control work, since it is considered a judicial work, the state is not liable for it except when the legislator explicitly decides so.

Third: Administrative Control and Public Utilities:

Both the concepts of administrative control and public utilities are considered aspects of administrative activity. Through administrative control, public order is achieved in society and the state in a preventative manner. This is also achieved through public utilities by providing the services and goods necessary to satisfy the public material and moral needs in society and the state regularly and steadily. We must note that the requirement that the objective be

¹ -A. Maher Murad Khan: "The Balance between Administrative Control and Public Freedoms," a Comparative Study, Master's Thesis in Law, Alexandria University, 2014, p. 21.

² -A. Bashar Salah Al-Awour, Administrative Control Powers in Exceptional Circumstances in Palestinian Legislation, Master's Thesis in Law, Al-Azhar University, Gaza, 2013, p. 24.

³ -See: Dr. Ibrahim Abdel Aziz Sheikh, A Concise Guide to the Principles and Provisions of Administrative Law, 1st ed., 2012, p. 307.

⁴ -See: Our Professor Dr. Majed Ragheb Al-Helou: "Administrative Law," University Publications House, Alexandria 1984, p. 428. See also: Dr. Adel Al-Saeed Abu Al-Khair: "Administrative Police," previous reference, p. 111.

⁵ -Dr. Adel Al-Saeed Abu Al-Khair: "Administrative Police," previous reference, p. 111.

The public utility seeks to achieve public benefit. This does not mean in any way that the services it provides to citizens must be free. Sometimes the state resorts to obligating individuals to pay a financial consideration or certain fees as a result of providing services to them ¹.

We find that there is a similarity, overlap and integration between the idea of administrative control and the idea of public service in relation to the function of achieving public order. However, we often find the distinction between them based on the fact that administrative control, in order to achieve its goals, restricts the freedoms of individuals, unlike the public service that provides them with services. Therefore, the similarities and integration between the ideas of administrative control and public service must be addressed, and then the differences between them must be addressed.

A- Similarities between administrative control and public services:

Administrative control and public services are similar, complementary, and cooperative in achieving a single goal: public order with all its components. The actions, procedures, and methods of administrative control contribute to the smooth and steady operation of public services. Conversely, the establishment, organization, and facilitation of public services facilitate the task of administrative control in maintaining public order ². The procedures and methods adopted by both bodies may be similar and overlap. The competent administrative control authorities take measures, decisions, and actions that include and contain manifestations of sovereignty and public authority, such as decisions and procedures for enforceable enforcement. Public service authorities also exercise the same methods when dealing with public service workers and contractors.

B- Differences between Administrative Control and Public Utilities:

Professor George Fidel believes that the correct and sound idea for distinguishing and differentiating between administrative control and public utility is represented by the necessity of combining several elements, namely the method of activity, the scope of activity, and the goal of activity, so that we can differentiate between administrative control and public utility ³.

Accordingly, whenever the administrative activity takes the method of command and prohibition that is binding on the management of the sole administrative authority with the aim of achieving public order, and the scope of the activity is individual freedoms through the restrictions imposed on them, this activity is considered an act of administrative control. Conversely, it is considered an act of public utility if the activity takes the method of providing goods and services in order to satisfy the public needs in society and the state ⁴.

Despite the difference between administrative control and public services, they are two integrated systems that complement each other, as the regularity of the public service helps administrative control to carry out its preventive function. Moreover, the performance of administrative control in its mission to protect the public order with its basic

¹ -Dr. Muhammad Abdullah Al-Harari: "Principles of Libyan Administrative Law, University Library Publications," Tripoli, Sixth Edition 2010, p. 254.

² -Dr. Tharwat Badawi: "Administrative Law," Dar Al Nahda Al Arabiya, 1974, p. 387.

³ -Georges Fidel Bayard: "Administrative Law Part Two," translated by Mansour Al-Qadi, University Foundation for Studies, Publishing and Distribution, 2001, p. 503

⁴ -Dr. Mahmoud Saad El-Din El-Sherif: "The General Theory of Administrative Control," Al-Dawla Magazine, Eleventh Year, Cairo, 1962, p. 153.

elements represented by security, health and tranquillity is considered a condition for the good regularity of public services, and this is what the administration seeks ¹.

Fourth: Administrative Control and the Public Domain:

Control is an administrative activity aimed at regulating individual activity with the aim of protecting public order in society. The domain, whether public or private, is state-owned property. Therefore, administrative control is completely different from the domain. However, confusion may arise between the two areas, as individuals often conduct their activities in the public domain or public health. In this case, control intervenes with the aim of maintaining public order ². Confusion also occurs when the domain administration takes measures to regulate, maintain, and preserve the domain, which is a preventative task, and in this, the purposes of control become apparent. The use of the domain leads to the activation of two types of authority: the power of control and the power of property management ³.

The question that arises here is to what extent is the regulation of the use of public funds related to the purposes of administrative control? The method of administrative control to intervene in regulating the use of public funds is evident in the following:

- Regulatory intervention in the public use of public funds:

The use of public funds is a public right for all individuals ⁴. This use is based on several principles:

The first principle: The freedom of individuals to use public funds. Anyone who walks on the public road is exercising a public freedom. By using the function of administrative control, the administration must take into account the following:

1. Enabling individuals to exercise their right to use public funds by establishing a legally based regulation that achieves the objectives of public order.
2. Regulating the exercise of public rights and freedoms related to public funds must not constitute a restriction that prevents their complete exercise, as this would be illegitimate due to its conflict with public freedoms ⁵.

The second principle: represents equality in the use of public funds based on the principle of equality before the law, as the recognition of public freedoms requires that everyone be equal in exercising them, even if it is not absolute equality, which means that there is a distinction between individuals in the use of money the year depends on the different ways they use it, such as requiring a license to drive cars, or allocating a tram car to women or families and not others ⁶.

¹ -Dr. Magdy Ahmed Fathallah: "The Effectiveness of Police Performance," previous reference, p. 75.

² -Dr. Muhammad Sharif Ismail: "Administrative Control Powers in Exceptional Circumstances," A Comparative Study, PhD Thesis in Law, Ain Shams University, 1979, p. 50.

³ -Dr. Adel Al-Saeed Abu Al-Khair: "Administrative Police," previous reference, p. 134.

⁴ -Article 33 of Libyan Law No. 20 of 1991 on the Promotion of Freedom stipulates that public funds and facilities are the property of society and may not be used for purposes other than those designated for them by the people.

⁵ -Dr. Muhammad Farouk Abdel Hamid: "The Legal Status of Public Money in Egypt under Socialist Application," (p. 181), (n.d.), p. 181.

⁶ -Dr. Sami Gamal El-Din: "Principles of Administrative Law" (Part Two), University Publications House, 1996, p. 614

Islamic law has adopted the principle of equality in the use of public funds, provided that such use does not harm the rights of others related to the use of these funds. This is clarified in the noble hadith, “Muslims are partners in three things: water, pasture, and fire.”¹ This is a model of equality in the use of these funds and all funds whose use does not require any special effort².

The third principle: the free use of public money. This principle is also linked to the first principle, which considers public use to be one of the forms of public freedoms. Freedom of use certainly leads to free use. However, with general development, the administration has sometimes deviated from the principle of free use. The motive behind this is that the administration has come to view public money as an economic value that should be exploited under the best conditions³.

- Regulatory Intervention in the Private Use of Public Funds:

The default in the use of public funds must be public, but every rule has an exception. When public funds are used for a purpose other than that for which they were designated, such that they are restricted to specific individuals, depriving others of their right to benefit from them, in this case it can be said that the use of public funds is private. This private use occurs either through a license⁴ granted by the existing administrative authorities (the administrative control authority), or through a contract between the administrative control authority and the beneficiary of public funds, provided that this license or contract includes conditions related to considerations of public security, public tranquillity, and public health.

Administrative control of public funds is not only judicial or punitive control, but also aims to prevent attacks that affect the integrity of public funds, whether it is related to physical damage or an act of usurpation, and whether the violation is represented in committing a positive act or in refraining from fulfilling a legal obligation. It is sufficient that the act is likely to carry an attack on public funds or affect their use or preservation. In Egypt, there are many punitive texts that aim to protect public funds from attacks that may occur to them. The Penal Code, in Articles 162-170, prohibits the destruction of public funds in its various forms and the disruption of transportation⁵.

Fifth: General and special administrative control:

Administrative control is classified based on its location into general administrative control exercised by all administrative authorities and applied to all individual activities, and special administrative control exercised by some administrative authorities to precisely regulate a specific individual activity⁶.

¹ -Muhammad ibn Ali al-Shawkani, Nail al-Awtar, Dar al-Hadith Publications, 1st ed., 1993, p. 365.

² -See: Dr. Ahmed Mohamed Al-Assal, and Dr. Fathi Ahmed Abdel Karim, The Economic System in Islam, Cairo, 1977, p. 67.

³ -Dr. Adel Al-Saeed Abu Al-Khair: “Administrative Police,” previous reference, p. 141.

⁴ -Article 26 of Libyan Law No. 5 of 1969 on Urban Planning and Organization stipulates that it is not permissible to encroach upon the benefits established or managed by the municipality, nor may they be exploited or utilized except in accordance with the conditions and procedures established by the municipality.

⁵ -See: Our Professor Dr. Majid Al-Helou, Environmental Protection Law in Light of Sharia, previous reference, p. 103.

⁶ -A. Zainab Abbas Mohsen, Environmental Administrative Control in Iraq, a research paper submitted to Risalat Al-Huqooq Journal, Al-Qadisiyah University, Iraq, Fifth Year, Third Issue, 2013, p. 148.

A- General Administrative Control:

General administrative control aims to protect the environment by safeguarding public security, public health, and public tranquillity, as well as protecting the community from accidents and hazards caused by humans or by nature ¹. Maintaining public security protects the environment by preventing risks and problems that lead to its deterioration and taking the necessary measures to mitigate their effects should they occur, as well as preserving natural resources from the dangers that threaten them. Protecting the environment is a large part of protecting public security ².

Many rulings have been issued in Egypt regarding public security as a goal of administrative control. Among the rulings of the administrative judiciary in this regard is what the Supreme Administrative Court ruled regarding the permissibility of suspending the licenses of some shops selling alcohol and beer in some governorates of the Republic due to the possibility of a breach of public security from their activity in the event of an imminent danger to public health or public security as a result of managing a shop of the shops to which the provisions of this law apply. The Director of the Licensing Department may, based on the proposal of the branch of the administration in whose jurisdiction the shop is located, issue a reasoned decision to suspend the management of the shop in whole or in part, and this decision shall be enforceable by administrative means ³.

The Egyptian Administrative Court has ruled that: "Audio-visual works are subject to censorship, whether they are performed live or are fixed or recorded on tapes, discs, or any other means of technology, with the aim of protecting public order, morals, and the supreme interests of the state" ⁴.

As for public health, which is intended to protect the public's health from the danger of diseases, combat their causes, and prevent the spread of epidemics, environmental pollution in its various forms is considered one of the most important factors that harm human health and cause diseases. Therefore, combating pollution leads to preserving public health ⁵.

Among the rulings of the Egyptian Supreme Administrative Court regarding the protection of environmental health is its decision that the Ministry of Health may take whatever regulatory measures it deems necessary to preserve people's health, protect them from diseases, and prevent the emergence or spread of diseases whenever they are necessary and essential to maintain public health ⁶.

As for public tranquillity, which means everything that affects the comfort of citizens, i.e. maintaining peace and quiet on roads, public places and residential areas, and given the special importance of this element in preventing psychological and nervous diseases, which are called diseases of the age, the administration must take all necessary measures to combat noise that disturbs comfort, such as sounds emitted from loudspeakers or from radios and televisions used in homes, cafes, or anywhere else, or from cars passing through the streets. Maintaining public

¹ -Dr. Muhammad Rifat Abdul Wahab: "Principles and Provisions of Administrative Law," Al-Halabi Publications, Beirut, 2005, p. 337

² -Abdullah Rashid Saeed: "The Role of Public Law in Protecting the Environment," previous reference, p. 413.

³ -Dr. Muhammad Maher Abu Al-Ainin: "Administrative Licenses and Related Decisions in the State Council's Judiciary and Fatwas," an Analytical Study, Book One, First Edition, 2006, p. 970.

⁴ -The Egyptian Administrative Court in Appeal No. 3022 of 62 Q, Session 11-24-2009.

⁵ -Dr. Abdullah Rashid Saeed: "The Role of Public Law in Protecting the Environment," previous reference, p. 415.

⁶ -Ruling of the Egyptian Supreme Administrative Court in Case No. 294 of 10 Q, Session of 5/18/1968, Collection of Rulings of the Thirteenth Year, p. 924.

tranquility also includes preventing harassment caused by beggars or street vendors, as well as preventing the use of dazzling car lights at night, as they can lead to accidents as a result of disrupting the vision of others ¹.

General administrative control aims to protect the public order in society from disturbances, whether by preventing their occurrence, stopping them, or preventing their exacerbation when they occur, at the level of the entire state, or at the level of one of its local units ², in addition to protecting society from dangers and violations and preventing their continuation if they occur, as it is necessary to maintain the public security of the nation and citizens, protect public health from diseases, and provide public tranquility for all residents in all places. These are the goals of administrative control, as we will explain in some detail in the second chapter of this message.

B- Special Administrative Control:

Special administrative control is that which the legislator establishes through special laws to regulate certain types of activity. It is entrusted to a special administrative authority with the aim of achieving specific objectives. These objectives may differ from the objectives of general administrative control, such as special administrative control of hunting, which aims to preserve animals and fish as living and important elements of the environment, and special administrative control to preserve aesthetic aspects or natural landscapes ³.

While another ⁴ sees it as the control that is organized by special legal or regulatory texts with the aim of preventing disruption of any aspect of public order in a specific field or with respect to a specific facility or towards a specific group of people, using more precise and precise methods, and more in line with and appropriate to this specific aspect.

While the scope of private administrative control activity is narrower compared to the scope of public administrative control, private administrative control grants the bodies that undertake it greater and more effective powers than those afforded to public administrative control bodies. Jurisprudence has established that private administrative control is what laws and regulations stipulate for the purpose of addressing disturbances in a specific area, provided that the administration uses more specific means that are technically appropriate to that area, and which are generally more stringent ⁵.

In the Libyan legal system, the meaning of special administrative control has not been addressed in administrative law. However, the numerous and successive legislations on various topics targeting its goals have made it a broader topic than the topic of general administrative control, which has been reflected in the extent of the importance of its

¹ -Dr. Ramadan Muhammad Battikh: "Administrative Control and Environmental Protection," previous reference, p. 9

² -Dr. Hossam Morsi: "Administrative Authority in the Field of Administrative Control," A Comparative Study in Positive Law and Islamic Jurisprudence, First Edition, Dar Al-Fikr Al-Jami'i, 2011, p. 116.

³ -See in this regard Dr. Majid Al-Helou: "Environmental Protection Law in Light of Sharia," op. cit., pp. 99-100, and also Dr. Majid Al-Helou: "Administrative Law," University Publications House, 1987, p. 439, where His Excellency believes that if there is a growing tendency to go beyond the known objectives of general administrative control by expanding the scope of special administrative control and creating new types of it to achieve specific goals that do not fall within the objectives of general administrative control, such as administrative control of gambling, which aims to protect the financial interests of individuals, and administrative control of compulsory pricing, which aims to maintain the prices of some basic commodities at a certain level to protect consumers, His Excellency does not favor this trend due to its danger to individual freedoms, provided that its approval is linked to a clear necessary interest or a fundamental interest that cannot be achieved without the means of administrative control.

⁴ -Dr. Mahmoud Saad El-Din El-Sherif: "The General Theory of Administrative Control," previous reference, p. 130.

⁵ -Dr. Mahmoud Atef Al-Banna: "The Mediator in Administrative Law," Dar Al-Fikr Al-Arabi, Cairo, 1984, p. 417.

powers and their impact on the stability of the public order with its various meanings ¹. Special administrative control aims to protect the public order in a specific way in an aspect of individual activity that aims to regulate a specific topic of individual activity. This type of control is entrusted to ministers who issue decisions, each according to his specializations. For example, the Minister of Culture when he issues decisions to protect antiquities and museums, which results in regulating the freedoms of individuals, and the Minister of Transport when he issues decisions to regulate the movement of trucks at night ².

Libyan legislation has stipulated several laws related to administrative control, including, for example, administrative control of gambling, which aims to protect the financial interests of individuals. Article (492) of the Libyan Penal Code stipulates the punishment of anyone who prepares equipment in a place open to the public for gambling or prepares a place for that, and Article (496) stipulates the punishment of anyone who establishes lottery games ³.

However, some types of special administrative control have objectives that do not differ from those of general administrative control. In such cases, administrative control is called special for one of the following reasons:

1. Either because it applies to a specific group of individuals, such as special administrative control of foreigners.
2. Or because it applies to a specific sector of activity, such as special administrative control of dangerous premises, establishments that are harmful to health, or that disturb peace.
- 3- Or because it has a special system that differs from the general administrative control system, as is the case with special administrative control of public health ⁴. Special administrative control is regulated by specific legislation, and each type has its own legal system. These types of special administrative control share a number of characteristics and attributes. The characteristics of special administrative control can be summarized as follows ⁵:

- 1- There is no special administrative control except pursuant to a law.
- 2- Special administrative control is characterized by being restricted by its purpose, such as administrative control for combating pollution, protecting the environment, combating drugs, and others.
- 3- The law determines the administrative authority responsible for exercising this control. This may be a general administrative control body, and it is only exercised through this body.
- 4- Administrative control may be specialized in a specific subject, regardless of the administrative body exercising it.
- 5- The law establishing special administrative control determines the penalties that can be imposed for violating these texts in addition to administrative sanctions. In France, for example, violating the texts of general administrative control is punishable in principle by the penalties for violations, while the penalties for special administrative control are often the penalties for misdemeanours. However, strengthening the powers of the

¹ -Dr. Naima Omar Abdullah: "The Role of the Administrative Judiciary in Achieving a Balance between Authority and Freedom in the Field of Administrative Control," op. cit., p. 129.

² -A. Boukrit Omar: "Judicial Oversight of Administrative Control Measures," Master's Thesis in Law, University of Mentouri, Algeria, 2007, p. 19

³ - Libyan Criminal Legislation Collection, Part One, Penalties, 1988, p. 123.

⁴ -Dr. Majed Al-Helou: "Environmental Protection Law in Light of Sharia," op. cit., p. 100.

⁵ -Dr. Muhammad Al-Wakil: "The State of Emergency and Administrative Control Powers," previous reference, p. 41.

administration in special administrative control systems is linked to two guarantees for the benefit of individuals: the existence of specific definitions in the legislative texts of the subjects and areas of activity and powers of special administrative control, which are usually interpreted narrowly, and then the commitment of the administration in these systems to respect procedural rules when exercising its powers.

Administrative control decisions related to environmental protection are usually provided with criminal penalties to ensure their enforcement, whether these penalties are found in the Penal Code or other laws ¹. After clarifying the characteristics of special administrative control, we can identify the criteria by which special administrative control can be distinguished from general administrative control, as follows:

- In terms of its bodies:

The activities targeted by the General Administrative Control in Libya are entrusted to specific special administrative bodies, including the former General People's Committee Decision No. 149 of 2006, establishing the Municipal Guard Authority, and Law No. (1) of 1983 regarding the Agricultural Inspection Authority. Price control is also entrusted by Law No. (13) of 1989 to the Municipal Price Determination Committee within the administrative scope of the municipality. Similarly, the implementation of legislation related to agricultural seizures, the examination and approval of certificates submitted on data and improved seeds, and the control of agricultural pests is entrusted to the Agricultural Pest Control Authority pursuant to the former General People's Committee Decision No. 253 of 1989 establishing the Agricultural Pest Control Authority ². The Minister of Health and the Health Inspector are entrusted with special control in the field of health.

A specific administrative body exercises special administrative control. For example, the district manager exercises control over dangerous and disturbing establishments, or those harmful to health. The censorship committee is entrusted with special control over the censorship of cinema films. There are also other authorities that may be entrusted with some control powers. For example, the university president exercises his powers in order to maintain public order in university premises ³. Control may be related to a specific place or specific places, such as administrative control over railways. It is special control in terms of the place in which it is exercised because it is entrusted to a special administrative authority. Administrative control may be related to specific groups, such as the law pertaining to the practice of medicine or pharmacy or the control pertaining to foreigners ⁴.

¹ -Dr. Majed Al-Helou: "Environmental Protection Law in Light of Sharia," previous reference, p. 101.

² -Dr. Naima Omar Abdullah: "The Role of the Libyan Administrative Judiciary in Achieving a Balance between Authority and Freedom in the Field of Administrative Control," previous reference, p. 130.

³ -The Egyptian Administrative Court has affirmed that: "Holding demonstration tools, such as flags, banners, and other noisy items on campus constitutes a violation of university regulations..." Appeal No. 27163 of 1969 AD, Session of 4/26/2016 AD. It is established in the rulings of the Egyptian Supreme Administrative Court regarding the cancellation of a student's exams in the event of engaging in an act that disrupts the examination system, such as rioting, making noise, or verbally or physically assaulting an exam supervisor or their assistants, whether inside or outside the examination hall..." Appeal No. 406 of 1923 AD, Session of 11-2-1978, Technical Office 23, Part One, p. 74.

⁴ -Dr. Daim Belkacem: "The Positive and Legal Public Order and Environmental Protection," previous reference, pp. 48-49.

In Egypt, the Minister of Transport, in his capacity as the supreme head of the railway facility, is entrusted by law with the responsibility of maintaining public order within the railway facility. Administrative control in this case targets a public order purpose, but is entrusted to a specific administrative body ¹.

- In terms of its subject matter:

The activities of the special administrative control in Libya are subject to a set of legislations to achieve its goals ², and its subjects vary from one legislation to another. The powers of the special administrative control, as they aim to control and organize buildings³ and clean squares and streets, also aim to protect public morals in public places, in accordance with what is stated in Law No. 56 of 1970 regarding the protection of public morals. Among its subjects are also the control of gold and silver metals that are manufactured in violation of units and standards ⁴, and the control of any deliberate or negligent act that may cause harm damage to machinery, equipment, pumps and agricultural production means⁵, monitoring public roads and ensuring their safety from traffic, as well as Libyan Antiquities Law No. 3 of 1993.

Examples of special legislation that grant special administrative control authorities greater authority than general administrative control authorities in Egypt include control targeting the type of activity, such as the administrative control regulated by Law No. 48 of 1982 on the protection of the Nile River and waterways from pollution, Law No. 93 of 1962 on the disposal of liquid waste ⁶, Law No. 119 of 2008 on the regulation of buildings, Law No. 52 of 1981 on the prevention of the harms of smoking, Law No. 427 of 1954 on preventing minors from entering cinemas to watch films shown therein, the law on the prohibition of building operation at night, Law No. 66 of 1973 on the regulation of traffic, amended by Law No. 121 of 2008, and Law No. 4 of 1994 on environmental protection, amended by Law No. 9 of 2009 ⁷. In France, Law No. 19 of July 1976 was issued on the regulation of facilities for environmental protection.

- In terms of its objectives:

Special administrative control may target purposes other than the three objectives of general administrative control. Examples of special administrative control include: control that aims to preserve the natural beauty of parks, roads, and squares; control that aims to preserve certain species of plants, animals, or birds; or control specifically for the protection of antiquities and archaeological and political sites ⁸; as well as special tax control that aims to combat tax evasion.

- Administrative control of individuals:

1 -Dr. Abdel Raouf Hashem Basyouni: "Administrative Control Theory," previous reference, p. 54.

2 -Examples of these laws include Law No. 5 of 1992 on the Protection of Pastures and Forests, Law No. 17 of 1985 on the Regulation of Pastures, and Law No. 13 of 1984 on Public Hygiene (Encyclopaedia of People's Court Legislation and the People's Prosecution Library, Parts One and Two).

3 -Law No. 116 of 1972 on Urban Development and its amendments.

4 -Decision of the former General People's Committee to establish the Municipal Guard Service No. 149 of 2006, Article 3/12.

5 -Law No. 7 of 1983 Concerning the Agricultural Inspection Authority, Article 2/4.

6 -Dr. Daoud Abdel Razek El-Baz: "Principles of Administrative Law," op. cit., p. 208.

7 -Dr. Ahmed Abdel Wahab Abdel Gawad, Environmental Legislation, Arab House for Publishing and Distribution, Cairo, 1991, p. 89.

8 -Dr. Abdel Raouf Hashem Basyouni, Theory of Administrative Control, previous reference, p. 54.

Special administrative control aims to address a specific group or type of individuals to regulate their work. Examples of this type of administrative control include the practice of medicine and pharmacy in France and Egypt ¹, and in Libya, such as Law No. (6) of 1987 regulating the entry and residence of foreigners.

Special Administrative Control Forms:

Special administrative control within the scope of environmental protection takes many forms, including control of nature reserves, control of construction and development, control of hazardous facilities, and control of public funds.

Regulations on Natural Reserves:

A natural reserve is any area of land, coastal or inland waters characterized by its habitats of living organisms, plants, animals, fish, or natural phenomena of cultural, scientific, tourist, or aesthetic value. The Egyptian Court of Cassation has ruled that "it is prohibited to undertake any acts, actions, activities, or procedures that would destroy, damage, or deteriorate the natural environment, or harm wildlife, marine life, or plant life, or affect its aesthetic quality within the protected area. It is also prohibited to erect buildings or facilities, pave roads, operate vehicles, or engage in any agricultural, industrial, or commercial activities within the protected area except with a permit from the competent administrative authority" ².

The specific control of natural reserves means limiting the private activity of individuals and groups in a specific area pursuant to a legislative text, with the aim of protecting the biological and natural diversity in this area, which is characterised by unique characteristics, whether in its living organisms or its natural phenomena ³.

The law grants special protection to nature reserves, prohibiting any action that would harm the natural environment or its aesthetic quality, or harm the living organisms, animals, or plants within them. Specifically, the following acts are prohibited:

- Hunting, killing, transporting, harming, or simply disturbing wild or marine creatures, or carrying out any action that would eliminate them.
- Hunting or transporting any organisms or organic materials, such as shells, coral reefs, or rocks.
- Destroying, transporting, or harming plants.
- Destroying or destroying geological or geographical formations or areas that are habitats for certain animal or plant species or for their reproduction.
- Introducing any alien species into the reserve area ⁴.

The importance of administrative control over nature reserves lies in its ability to ensure the protection of endangered species, both animals and plants, which play a significant role in maintaining ecological balance. According to Article 5 of Egyptian Environmental Law No. 4 of 1994, the Egyptian Environmental Affairs Agency (EEAA) is

¹ -Dr. Muhammad Obaid Al-Hasawi: "Administrative Control, Its Powers and Limits," (n.d.) 2003, p. 54.

² -See the Egyptian Court of Cassation, Civil Appeal No. 7647 of 66 Q, dated 11/19/2012, Technical Office 63, p. 1152.

³ -Dr. Eid Muhammad Manahi: "Administrative Protection of the Environment," Dar Al Nahda Al Arabiya, Cairo, 2009, p. 413.

⁴ -Dr. Majed Al-Helou: "Environmental Protection Law in Light of Sharia," previous reference, p. 119.

responsible for managing and supervising nature reserves through its regional branches located near each nature reserve. Natural Reserves Law No. 102 of 1983 and Environmental Law No. 4 of 1994 granted special administrative control authority to protect nature reserves ¹.

Libyan Law No. 15 of 2003 stipulates in Article 56 that "wild animals and birds must be preserved and protected from extinction by hunting, especially beneficial animals. To this end, protected areas must be designated and defined in which wild animals and birds are preserved, and hunting is strictly prohibited to ensure their reproduction." In unnatural circumstances, such as a shortage of water and pasture resources, relevant authorities must provide food to ensure the survival of wildlife.

Libyan Law No. 15 of 2003 stipulates in Article 56 that "wild animals and birds must be preserved and protected from extinction by hunting, especially beneficial animals. To this end, protected areas must be designated and defined in which wild animals and birds are preserved, and hunting is strictly prohibited to ensure their reproduction." ².

In unnatural conditions, such as a shortage of water and pasture resources, relevant authorities must provide food to sustain wildlife.

Administrative Control for Construction and Urban Planning:

The construction and urban planning system is closely linked to environmental pollution. Therefore, various legislations have enshrined numerous legal provisions related to combating pollution. These include provisions relating to minimum room capacity, ventilation, wastewater disposal, sewage networks, air pollution prevention, garbage disposal and storage, building ratios, and green spaces. Both the 1969 National Building Regulations and the 1961 National Urban Planning Regulations in France included numerous provisions related to combating pollution ³.

Administrative control in the field of construction and building construction is not only aimed at protecting the environment, but also at protecting public safety and the lives of individuals. This is achieved by ensuring that facilities and buildings comply with sound and well-thought-out rules in this field. To ensure the protection of public health, appropriate distances between buildings, the compatibility and homogeneity of the overall appearance of the building, and other such rules must be taken into account. Failure to comply with these rules necessitates the denial of building permits for the construction of buildings and residential complexes without providing access routes to connect them to public roads, in order to reach them in the event of fires and major hazards ⁴.

In Libyan Law No. 15 of 2003, Article 51/23 stipulated that the People's Committees for Conferences, the People's Committees for Districts, and other bodies must adhere to the instructions issued by the competent authority and coordinate and cooperate with it regarding the development and implementation of the necessary programs to provide services to provide a healthy environment for citizens. This is done by studying plans related to

¹ -Dr. Eid Muhammad Al-Manahi: "Administrative Protection of the Environment," previous reference, p. 428.

² -Law No. 15 of 2003 regarding the protection and improvement of the Libyan environment.

³ -See in this regard: Dr. Majed Al-Helou: "Administrative Control and Environmental Pollution in Kuwait," (with comparison), (n.d.), p. 31; Dr. Intisar Hajem Sultan: "The Role of Public Authority in Achieving Administrative Control in the Environmental Field - A Comparative Study," PhD Thesis, Faculty of Law, Alexandria University, 2018, p. 79.

⁴ -A. Lazhar Tarshi: "Mechanisms of Environmental Administrative Control," previous reference, p. 37.

development, urban planning, the establishment of residential cities, the establishment of factories, and other various facilities, in order to ensure the safety of these plans and their adherence to the necessary conditions for health and environmental plans ¹.

In Egypt, Law No. 119 of 2008, promulgating the Unified Building Law, regulates the construction and reconstruction process. Article 29 of the law requires obtaining a license before undertaking various construction works. For licenses to be granted, they must comply with the provisions of the law and comply with the technical principles, general specifications, safety requirements, and health rules specified in the executive regulations ².

The unified, indisputable concept of environmental administrative control is based on the absence of disturbances and everything related to the comfort and tranquility of residents. It is embodied in the traditional concept of control, which focuses on protecting security, health, and tranquility ³.

Regulations on Hazardous Facilities:

Hazardous facilities are industrial or commercial facilities that pose risks or nuisances to public safety, public health, or the comfort of neighbors. This requires special oversight by a special regulatory body aimed at preventing such risks or nuisances, the most important of which are the risk of explosion, fire, smoke, dust, odors, noise, tremors, water contamination, insects, etc. These facilities are divided into three categories according to the degree of danger or nuisance they pose, and their police are subordinate to the Minister of Environment and the Governor ⁴.

The Libyan Supreme Court ruled that the municipal administration has the right to set the conditions that must be observed in the establishment of dangerous establishments that disturb public safety or are harmful to public health, and to define areas based on their location suitability⁵.

Conclusion:

This study addresses the legal regulation of administrative control in Libyan legislation and comparative systems. The study concludes with a set of conclusions and recommendations, the most important of which are listed below:

First: Conclusions:

1- Maintaining public order is the goal of administrative control authorities. The concept of public order is a relatively flexible concept that varies from one country to another and from one place to another within a single country. It even varies from time to time.

2- The primary objective of administrative control procedures is to protect public order, including its traditional and non-traditional elements, which administrative control authorities seek to safeguard.

¹ -Law No. 15 of 2003 regarding the protection and improvement of the Libyan environment.

² -See our professor, Dr. Majid Al-Helou: "Environmental Protection Law in Light of Sharia," op. cit., pp. 104-105.

³ -Dr. Daoud Abdel Razek El-Baz: "Protecting Public Tranquility," previous reference, p. 106.

⁴ -See our professor, Dr. Majid Al-Helou: "Administrative Control and Environmental Pollution," op. cit., p. 33.

⁵ -The Libyan Supreme Court in Civil Appeal No. 51 of 20th Century, Session of 30-3-1975. And Civil Appeal No. 42 of 27th Century, Session of 17-1-1983.

3- Administrative control authorities are subject to the principle of legality, which requires that such actions be consistent with the law and not exceed its limits.

Second: Recommendations:

1. We recommend the necessity of cooperation and coordination between administrative control authorities and non-governmental organizations, and activating the role of civil society organizations in raising citizen awareness, holding conferences and seminars, and other activities. Individuals should play a positive role.
2. We recommend that the Libyan legislature pay more explicit attention to the issue of public rights and freedoms, providing greater protection and guarantees for these rights and freedoms.
3. The responsibility for maintaining public order is not the exclusive responsibility of administrative control authorities alone, but rather falls on the judicial authorities within the state.

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