



# JUDICIAL OVERSIGHT OF ADMINISTRATIVE CONTROL WORK IN THE KINGDOM OF SAUDI ARABIA

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## Abstract

*Exercising the function of administrative control is a manifestation of public authority in imposing public order through a set of privileges and powers exercised by administrative control bodies with the aim of maintaining the security, health and transparency of members of society. Administrative control actions are considered prior and prior measures that preceded the threat of disruption to public order. This is demonstrated by confirming everything that threatens its stability, by taking all prior measures before the actual break occurs, or even after its occurrence, if it does not mount to a criminal crime in which it is carried out. The function of judicial control with the aim of punishing its perpetrators. However, some times the task of administrative control continues after distractions occur. This means that the measures in this case are not prohibitive, but rather take the form of administrative penalties such as withdrawal of license, confirmation, or others. Accordingly, the study aims to identify the concept of judicial control over administrative control work and its characteristics, as well as the types of judicial control over administrative control work, its concept, and its forms, and to explain the means of administrative control work and the administrative judicial's control over it. The descriptive analytical approach was used and universal results were referred, including that administrative judicial oversight is one of the most important forms of effective oversight in the Kingdom of Saudi Arabia, the necessity that the administrative judicial authority is the body authorized by the system to protect and maintain the principle of legality, and that administrative control powers are a necessary function in society because they are restricted activities and freedoms of individuals in the field of maintained public order. Among the recommendations I proposed is that administrative control powers not used the powers granted to them in the field of administrative control under exceptional circumstances. Except in cases of maintaining public order.*

**Keywords:** *judicial oversight - administration - administrative control - exceptional circuits - normal circuits - administrative judge - public order.*

## INTRODUCTION

ENN Of the things that Consecrated today All members of society have rights and freedoms<sup>1</sup>For which many international conventions were issuedConferences were held, bodies were established, and amendments were made Most constitutions. Therefore, the authority must be respected These freedoms as the highest legal rules<sup>2</sup>But if the individual enjoys rights and freedoms<sup>3</sup> That doesn't mean it It's absolut. Or without controls Rather, freedom must be controlled

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1 Al-Din Al-Jilani Muhammad Buzid: Principles of Administrative Law and Their Applications in the Kingdom of Saudi Arabia, Al-Rushd Publishers Library, Riyadh, first edition, 1437 AH – 2016 AD, p. 169.

2 Al-Din Al-Jilani Muhammad Buzid: Principles of Administrative Law and Their Applications in the Kingdom of Saudi Arabia, op.cit., p.170.

3 Al-Ajami Hamdi Muhammad: Administrative law in the Kingdom of Saudi Arabia (general principles – administrative organization – administrative activity), a comparative study, previous reference, p. 277.



by the competent bodies and with the established guarantees. In order, The most dangerous threat to freedom for an individual is the imposition of restrictions on Exercising them, however, if we emphasize preserving these freedoms from any tampering or interference that hinders their use, except It must Let us not neglect in return About preserving society and maintaining public order until the public interest is achieved, considering that this represents a guarantee of freedom. Therefore, restrictions and oversight must be imposed on the administration when carrying out its activities<sup>4</sup>This is called "administrative control."<sup>5</sup> Which is considered Who is more important Administrative functions performed by management, Aiyaa It was the ideology it pursued It is the first duty of the state since Appearance. It is necessary for the stability and preservation of public order. Without administrative control, public order is destabilized, Therefore, it is considered the essence of public authority and takes precedence over all other functions of the state Other.The regulator assigned it to the executive authority This is due to its nature and its practical ability to intervene quickly to protect public order. In addition to the task assigned to it constitutionally, which is implementing laws, and therefore exercising administrative control activity is a natural result of implementing laws that stipulate the maintenance of public order. Administrative control is considered one of the most important forms of negative management activity<sup>6</sup>It is considered civilized behavior and a manifestation of civilization An administrative function is to protect public order. It is also considered a social necessity It is a set of means imposed by administrative control bodies on people's freedoms or activities with the aim of maintaining public order.They take the form of regulations or individual decisions, and result in a restriction of people's rights and freedoms to the extent that ensures finding a kind of balance between the requirements for exercising rights and freedoms.And the requirements of maintaining public order. This suitability is determined by the legislator and implemented by administrative control bodies. Despite the importance of administrative control work, it remains clear that the administration's activity and the restriction of people's freedoms it contains, whether in normal circumstances or in exceptional circumstances, is considered one of the most dangerous powers in its effects on public freedoms.It is also considered an area for administrative control bodies to deviate from their specific goal, which is Maintaining public order. This is because administrative control bodies are considered a legal authority that protects the legal system and the security of the group, within the framework of a set of controls that set limits that may not be violated. It is recognized that the judiciary Especially the administrative judiciary, represented by the Board of Grievances in the Kingdom of Saudi Arabia, is the state agency that has the most ability to subject the work of administrative control bodies to oversight, as it is a neutral authority and independent of public administration, and aims to achieve the public interest and reform the activity of administrative control bodies in accordance with the principle of sovereignty<sup>7</sup>. The importance and role of judicial oversight over the administration's work in general and its decisions related to administrative control in particular is to protect the principle of legality, establish a state of right and law, prevent the administration from being arbitrary towards individuals, and make the administrative judiciary a haven to protect


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4 Al-Kholy Omar: Al-Wajeez in Saudi Administrative Law, Cataloging the King Fahd National Library during Publication, Jeddah, third edition, 1443 AH – 2021 AD, p. 181.

5 Al-Kholy Omar: Al-Wajeez in Saudi Administrative Law, previous reference, p. 181.

6 Al-Kahlawi Rajab Muhammad Al-Sayyid: The Administrative System in the Kingdom of Saudi Arabia, Al-Shaqri Library, first edition, 1438 AH, p. 130.

7 Al-Maaytah, Othman Zaal Fares: Judicial oversight of administrative control actions, previous reference, p.1662.



them and protect their rights enshrined in the constitution and regulations<sup>8</sup> Every transgression by the administration and infringement on rights and freedoms represents arbitrariness, and this principle represents the constitutional basis for oversight of the administration's action<sup>9</sup>. The best type of oversight of the administration's work is judicial oversight, for several reasons, including that if political oversight is subject to political circumstances and considerations, and administrative oversight is not characterized by impartiality and objectivity and lacks impartiality, because it is possible for the administration not to admit its mistake<sup>10</sup> It is also not permissible for the administration to be an opponent or an arbiter of anyone. Therefore, judicial oversight is more reliable with regard to Citizens, because of the knowledge, knowledge, integrity and independence that judiciaries may possess in their judicial oversight. The latter also only exists based on the grievance of individuals or bodies<sup>11</sup>. Hence the importance of judicial oversight as a guarantee for resolving the problem of conflict between administrative control bodies and the rights and freedoms of individuals, so that the administration's activity must be subject to broad judicial oversight that ensures that administrative control bodies adhere to the controls that they must respect to protect the rights and freedoms of individuals<sup>12</sup> The judiciary is the state agency that has the most investigative ability to subject the work of administrative control bodies to oversight For the public interest<sup>13</sup>. Resorting to the judiciary through administrative litigation is considered one of the strongest real guarantees of freedom in the face of the abuse of its authority by administrative control bodies. Judicial oversight of administration activity has witnessed major and important developments in comparative laws, especially French law<sup>14</sup> It reached a level where administrative activity became a subject under the microscope of the administrative judiciary. Through it, he monitors the legitimacy of this activity. Through the means available to individuals to challenge the legality of administrative acts subject to judicial control. WHEN The administrative function in society aims To achieve the public interest through public administrative institutions and facilities Public administration. In order for administrative bodies to be able to achieve their various goals, within the scope of the principles of legality and public interest, they exercise different and diverse administrative powers in confronting the rights and freedoms of individuals and their fundamental interests, including the powers of administrative control means<sup>15</sup> The authority to make administrative decisions, the authority of direct implementation, the authority of coercive implementation, and the powers and privileges of the contracting public administration vis-à-vis the contracting party . Also, the public administration, which possesses powers, often comes into contact with its various means, including administrative control authorities, with the rights and freedoms of individuals constantly and forcefully, which poses serious and ever-present risks to the legal system of human and citizen rights and freedoms, and harms the principle of legal legitimacy to which the administration is subject. Public administration,

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8 Al-Ghanai Tawfiq bin Al-Sadiq: Al-Wajeez in Administrative Law, (Definition of Administrative Law – Administrative Organization – Administrative Activity), previous reference –, p.250.

9 Gamal El-Din Sami: Oversight of Administration Work, Knowledge Establishment, Alexandria, Egypt, without publication date, p.230.

10 Al-Masry Sabah: Al-Wajeez in Saudi Administrative Law, previous reference, p.208.

11 Judicial Oversight About Administration work of Judge Issa Abu Sharar. Afaq Magazine.

[www.aafaq.org/fact8/2htm](http://www.aafaq.org/fact8/2htm)

12 Al-Kholy Omar: Al-Wajeez in Saudi Administrative Law, previous reference, p. 182.

13 Al-Masry Sabah: Al-Wajeez in Saudi Administrative Law, op.cit., p.207.

14 Al-Ajami Hamdi Muhammad: Administrative law in the Kingdom of Saudi Arabia (general principles – administrative organization – administrative activity), a comparative study, previous reference, p. 277.

15 Al-Masry Sabah: Al-Wajeez in Saudi Administrative Law, previous reference, pp.215–216.



as public administration actions outside legal legitimacy result in administrative and judicial disputes between it and individuals. This requires devoting and activating all types of oversight of the work of public administration to ensure the supremacy of the principle of legitimacy, achieving justice and protecting the public interest, from all sources and dangers of methods of administrative corruption, bureaucracy and sabotage, as well as protecting the rights and freedoms of individuals and their fundamental interests from all Manifestations of deviation, tyranny and administrative abuse<sup>16</sup>. Oversight of the administration's work varies, including political oversight, administrative oversight, which is the self-oversight carried out by the Administrative Commandments Authority, in addition to judicial oversight, which is the oversight carried out by the administrative judiciary according to the judicial organization of each Arab country. Based on the above, it becomes clear that judicial oversight of administrative control measures has an effective effect through the cancellation lawsuit, which is based on disputing the administrative control decision, and verifying the legitimacy of the administrative control measures or not, and to a lesser extent, the legitimacy of these measures can be determined through a lawsuit to assess the legitimacy in a way Directly or indirectly, and here the role of the administrative judge emerges in resolving this dispute, which is distinguished from other disputes that fall within the jurisdiction of the administrative judiciary in that it is a dispute based primarily on the necessity of reconciling the freedom of individuals guaranteed by law, and the necessity of maintaining public order. The function of administrative control has increased in importance and necessity in recent times, and its mission has become to regulate freedoms Amra Inevitably And necessary So that the exercise of public freedoms and private activities does not turn into chaos<sup>17</sup>. The issue of administrative control is of great importance in that states and societies can only be established by maintaining public order with its various elements And adhere to this system A duty because it is considered one of the very important necessities for maintaining and preserving societies<sup>18</sup>. The theory of administrative control is also considered one of the oldest theories of administrative law, and is still being studied at the present time due to the changes and developments taking place in this field. The importance of the study also appears through the orientation of the Saudi Arab community, in accordance with its Vision 2030, towards ensuring a distinguished position for administration and burdening it with many tasks in the field of development and economic movement and openness to the world. It is not possible for it to do so unless it is able to achieve public order and devote the protection of public freedoms, and if it achieves that, It is not strange for the Kingdom of Saudi Arabia under its wise leadership, as it leaves an impression of satisfaction among social circles Thus, establishing trust in society and its management. In light of the above and given Due to the importance of this topic, this study would reveal On the reality and role of judicial oversight of administrative control measures Which is considered more effective and efficient. The importance of the study is also embodied in the statement of judicial oversight over administrative control work in general, and its decisions related to administrative control, especially protecting the principle of legality, and working to make the administrative judiciary the only and primary resort for protecting the rights of individuals that have been enshrined within the constitution and the system, especially with the Kingdom's Vision 2030 . In general, the study aims to address a topic of great importance, which is judicial oversight of administrative control work in the Kingdom of Saudi Arabia, and through it the following objectives will be achieved:

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<sup>16</sup> 16 Al-Kholy Omar: *Al-Wajeez in Saudi Administrative Law*, previous reference, p. 194.

<sup>17</sup> Mr. Khalil Heikal: *Saudi Administrative Law*, Dar Al-Zahra for Publishing and Distribution, Riyadh, 1429 A.H, pp. 108.

<sup>18</sup> Al-Ghanai Tawfiq bin Al-Sadiq: *Al-Wajeez in Administrative Law*, (Definition of Administrative Law – Administrative Organization – Administrative Activity), previous reference –, p.250.

1- Explaining the concept of judicial oversight of administrative control work and its characteristics.

2- Clarifying the types of judicial oversight over administrative control work .

3- Explaining the concept of administrative control, its forms, and its importance in maintaining public order in society . This study raises the main question As follows: To what extent has judicial oversight of administrative control activities contributed to protecting the rights and freedoms of individuals? I used it in this study The analytical approach is through studying and analyzing the function of administrative control, and the methods of judicial oversight exercised over it. I also adopted the descriptive approach, especially in the first section in which I spoke About the nature of administrative control, in addition to the combination of descriptive and analytical approaches that I relied on in the rest of the subsequent investigations. Therefore, a descriptive-analytical approach was used to fit the approach followed to the nature of the study title. We will divide the study into the following form: The first section: The subsection of administrative control bodies to the oversight of the administrative judiciary. The second section : The limits of judicial oversight of administrative control activities:

## CONCLUSION

### **The First research: Bodies and means Administrative control and judicial oversight:**

The importance of administrative control, and especially its danger, lies in its relationship to individual and collective rights and freedoms within the state. It is the means to protect them and regulate their enjoyment, but arbitrariness may occur on the part of the administration in exercising it, thus violating those rights and freedoms. There was a time here when it was necessary to find controls to impose the equation between the privileges of public authority, represented by the activity of administrative control in various methods, means and objectives, and the rights and freedoms of individuals. Thus, administrative control was subjected to a legal system that regulates its practice, and the administration clarifies its powers, by the way, and the limits of those powers, through the controls that It must adhere to it<sup>19</sup>. The process of identifying these administrative bodies is of great importance given the connection between administrative control procedures and measures and the rights and freedoms of individuals. Therefore, the constitutional and regulatory texts regarding administrative control are entrusted to specific bodies that undertake the tasks of taking control procedures and measures, and to workers who undertake the tasks of implementing them .There are many bodies responsible for Administrative control in the Kingdom of Saudi Arabia, the most important of which is the King (Custodian of the Two Holy Mosques). According to the text of Article 55 of the Basic Law of Governance, "The King carries out public policy in a legitimate manner in accordance with the provisions of Islam, and supervises the application of Islamic law, regulations, and the general policy of the state and the protection and defense of the country."<sup>20</sup> Accordingly, His Majesty the King (Custodian of the Two Holy Mosques) is considered an administrative control body in normal and exceptional circumstances. If a danger arises that threatens the safety of the Kingdom, its territorial integrity, or the security and interests of its people, or hinders state institutions from performing their duties, he must take prompt measures to ensure Confronting this danger. What is meant by rapid measures here are control measures aimed at protecting public order. In normal circumstances, the King is also responsible for issuing control regulations that regulate the exercise of individuals' rights and freedoms to ensure the protection of public order. In addition to the Council of Ministers, whose

19 Al-Ghanai Tawfiq bin Al-Sadiq: Al-Wajeez in Administrative Law, (Definition of Administrative Law – Administrative Organization – Administrative Activity), previous reference –, p.264.

20 The Basic Law of Governance issued by Royal Decree No.A/90 of 27 August 1412.





jurisdiction in the field of administrative control came in accordance with the text of Article 19 of the Council of Ministers' system, which stipulates that "taking into account what is stated in the Basic Law of Governance and the Shura Council's system, the Council of Ministers shall formulate the internal, foreign, financial, economic, educational, defense policy and all public affairs of the state and supervise "On its implementation." Article 24 of the same system also stipulates that " The Council as the direct executive authority has complete control over matters of implementation and administration," he said<sup>21</sup>. It is clear from the above Participation of His Majesty the King with the Council of Ministers in issuing control regulations. In addition to the ministers, each minister has the right, with regard to his ministry, to issue control regulations, given that the minister represents the supreme head of his ministries. We also find among the administrative control bodies the princes of the regions, as Article 7 of the Regions Law stipulates. However, "the Emir of each region shall administer it, in accordance with the general policy of the state, and in accordance with the provisions of this system and other laws and regulations, and he must, in particular, maintain security, order and stability, and take the necessary measures for that in accordance with the laws and regulations." In addition to the municipal councils that were empowered with administrative control authority in accordance with Article 23 of the Municipalities and Villages Law, which required that "the municipal council shall take its decisions on all matters related to municipalities in accordance with this system and other rules and regulations, especially in setting the executive regulations necessary for the municipality to exercise its duties with regard to health and comfort." Public buildings, facilities, etc."<sup>22</sup>. Finally, we find the Commission for the Promotion of Virtue and the Prevention of Vice, whose authority was administrative control to guide people and advise them to follow the religious duties stipulated in Islamic law, and to force people to perform them and forbid evil in a way that prevents them from committing forbidden and forbidden things according to Islamic law or following bad customs and traditions or reprehensible heresies. According to this organization, the Commission is responsible for carrying out the duty of enjoining good and forbidding evil and calling for it with kindness and gentleness, following the example of the Messenger, may God bless him and grant him peace, and his Rightly Guided Caliphs after him, while targeting legal objectives, and contributing with the competent authorities in combating drugs and explaining their harm to the family and society<sup>23</sup>. Since administrative control means a set of decisions issued by the public authority aimed at restricting the freedoms of individuals in order to achieve public order within society, these authorities have various means to use to maintain this public order, and those restrictions that the public authority places on freedoms must be subject to Controls and limits prevent arbitrary exercise. Material means mean all the capabilities and means available to the administration for the purpose of exercising its powers, including police cars, planes, laboratories, and in general every machine or equipment that enables the administration to exercise its duties in the field of control. Central or local administrative control authorities are also placed at the disposal of agents and bodies to implement the regulations and control decisions issued by those authorities and implement them in the field. The municipal police, police officers, and national gendarmerie are the human means used and used by the mayor in the field of general administrative control. The police are also considered a means of maintaining public order in the field of construction and reconstruction. Just as police services constitute the primary human means for other control authorities, especially central ones,

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21 The Regulations of the Council of Ministers, promulgated by Royal Decree No.

22 The Municipalities and Villages Regulations promulgated by Royal Decree No.M/5 of 21 February 1397 A.H.based on Council of Ministers decision No.130 of 6 February 1397 A.H.

23 Article 6 of Organizing the General Presidency of the Commission for the Promotion of Virtue and the Prevention of Vice 1437 AH BCabinet Resolution No.(289) dated 4/7/1437.



while army forces can intervene in exceptional cases in particular<sup>24</sup>. In order for these bodies to exercise their powers for the purpose of maintaining public order, they use some methods or means that achieve that goal. The administration's powers vary and multiply on the occasion of exercising administrative control, through the multiplicity of means adopted, and their contents and effects vary, although they all converge around achieving the common goal of administrative control, which is to protect public order with its various elements. These means can be distributed between legal actions and legal actions. Legal acts are legal texts issued by specialized government agencies, as stipulated in the constitutions and regulations of countries. It is divided into many legal forms, including applied work and administrative work. Regulatory acts are represented by regulations, and sometimes some independent royal orders, that regulate rights and freedoms, and administrative control activities related to them, and represent the legal foundations of administrative acts. In this context, many basic regulations were issued in the Kingdom of Saudi Arabia, which have a direct relationship to administrative control and its means, such as the Basic Law of Governance, the Council of Ministers System, the Regions System, and many regular regulations, such as the Municipalities and Villages System, the Environment System, and the Traffic System, the health system, the system of private health institutions, the system of health surveillance at entry points, the lunch system, the system of activities that disturb comfort, are dangerous, or are harmful to health or the environment, the system of roads and buildings, Competition system, border security system, weapons and ammunition system, anti-begging system, anti-cover-up system, anti-commercial fraud system, roads and buildings system, waste management system, waste preservation system. As for material works, they are legal texts issued by various administrative bodies that exercise administrative control functions. They are based on basic or regular regulations and independent royal orders, and can be obtained through control regulations and individual decisions<sup>25</sup>. As for the control regulations its scope has expanded at the present time due to the expansion of state powers and the expansion of its functions, as it has become of great importance and it is necessary social and felt by all societies, as it is one of the means by which damage and crimes are better prevented than treated after they occur. One of the most important means of administrative control is the control regulations that are used by administrative control bodies to achieve public order in society, through which they establish abstract general rules in which they regulate and restrict some aspects of individual activity under penalty of punishment. Therefore, they affect the rights of individuals and restrict their freedoms<sup>26</sup>. It means those regulations issued by the executive authority with the aim of maintaining public order in its various elements. Through these regulations, the executive authority can set certain rules that restrict the freedoms of individuals within society with the aim of maintaining public order. An example of these regulations is those issued to regulate traffic in public stores that are dangerous, harmful to health, or disturbing comfort, and the list of municipal violations in the Kingdom of Saudi Arabia. In addition to the prohibition or (prevention), which is "the end of the regulation preventing taking a specific action or practicing a specific activity and that this prohibition (prevention) was absolute and comprehensive and focused on a legally permissible activity, it falls within the meaning of the abolition of individual freedom and therefore it is illegal, but if the ban is partial and temporary and cannot be linked to the point of abolishing public

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24 Al-Kholy Omar: *Al-Wajeez in Saudi Administrative Law*, previous reference, p. 189.

25 Al-Masry Sabah: *Al-Wajeez in Saudi Administrative Law*, previous reference, p. 227.

26 Soleimani Al-Saeed, *Administrative Control*, lectures given to first-year master's students, specializing in internal public law, Faculty of Law and Political Science, Muhammad Al-Siddiq Bin Yahya University, Jijel, academic year, 2016/2017, p. 27.

freedoms, then it is legitimate."<sup>27</sup>. This is in addition to licensing, as "the previous license or permission requires individuals to obtain a license or permit from the administrative authority To practice a specific activity, which in this case is considered A lighter measure than prohibition, but subjecting the exercise of freedom to the previous licensing system is considered to a relatively certain extent a necessity that the administration cannot require except based on a text in the constitution or law, since the legislator is competent to regulate freedoms. It is also necessary to notify the administrative authority in advance, which means that "the individual's activity on a specific subject is not prohibited, and it is not required to practice it if permission to do so has previously been obtained from the competent authority, but by virtue of his direct contacts with public order in its tripartite sense, he must be notified to the competent authorities so that they can take The necessary measures to protect public order and prevent the occurrence of anything that threatens it in a timely manner. Finally, organizing the activity, because "the administrative control regulations in this form are limited to organizing the activity by setting directives regarding how to practice the individual activity, so the administration does not prevent the activity and does not subject it to prior permission or notification." Rather, it is sufficient only to organize the activity in advance. An example of this is specifying the directives and instructions set by the traffic regulations for individuals regarding how cars should move, walk on the right, and cross the road by placing signals and setting a minimum speed limit for cars in residential areas and a maximum on highways."<sup>28</sup>. In addition to regulations, administrative authorities exercise their control authority through orders, prohibitions, and individual decisions directed to a specific individual or group of individuals to prevent harm to public order. An example of this is a decision A mayor demolishes a house owned by an individual because it is on the verge of collapse, or closes an individual's industrial facility for violating licensing and safety conditions. Administrative control bodies may also use force in the event of a disturbance in public order and forcibly implement decisions without obtaining prior permission from the judiciary. This procedure is considered one of the privileges enjoyed by the administration and an exception to the principle because the authority may not use physical force except after a ruling is issued by the judiciary, but in cases of necessity and in cases determined by law based on the requirements of the public interest. The administration usually uses physical force or forced execution to force individuals to implement laws, regulations and administrative decisions to prevent disruption of public order. This method is considered the most severe and violent means of control, as it uses coercive force, and it is no secret that this poses a danger to the rights and freedoms of individuals. The forced implementation of administrative control decisions is one of the applications of the theory of direct implementation of administrative decisions, and based on this, no prior permission is obtained from the judicial authorities to implement it. However, it must meet the same conditions for direct implementation. Among the cases in which forced execution can be resorted to is when the law or regulations permit the use of this right, or individuals refuse to implement the laws and regulations, and there is no other method to force individuals to respect the laws and regulations other than forced execution, and this method is also resorted to in cases of necessity. It is required in all Cases: The use of physical force must be proportional to the gravity of the danger to which public order may be exposed. Finally, it must be noted that the use of physical force does not necessarily mean Punishing individuals for criminal acts they committed. Rather, material force means the force used to prevent any disturbance of public order through its three elements. The

27 Bernard Stirn, *Ordre public et libertés publiques*, Colloque sur l'Ordre public, organisé par l'Association française de philosophie du droit les 17 et 18 September 2015.

Sur: [www.conseil-etat.fr](http://www.conseil-etat.fr)

28 Al-Ghanai Tawfiq bin Al-Sadiq: *Al-Wajeez in Administrative Law*, (Definition of Administrative Law – Administrative Organization – Administrative Activity), previous reference –, p.262.





basic principle is that individuals comply with and submit to the administration's decisions. However, in certain and exceptional cases, administrative control bodies are authorized to resort to direct enforcement and use material force to prevent a disturbance or attempt to disturb public order without requiring that they obtain a prior conviction from the judiciary. Therefore, the direct enforcement authority allows the use of force to implement and implement its decisions. Especially when individuals refrain from obeying and submitting to it. Force is only used in cases of necessity and urgency, and forms of this procedure include dispersing gatherings and demonstrations in public places, and any activity that leads to harming public order. In normal circumstances, administrative control authorities are bound to respect the principle of legality on the one hand and are subject to judicial oversight on the other hand. Legitimacy is defined as legal sovereignty, that is, its provisions are respected and apply to both the ruler and the ruled. The law must govern the behavior of individuals, not only in their relations with each other, but also in their relations with the governing bodies of the state."<sup>29</sup> The principle of legality therefore means that all administration activities are public and are carried out within legal limits, regardless of their source, taking into account the gradualness of their strength. Every administrative action that deviates from the provisions of this principle is subject to challenge, and since public freedoms in general are guaranteed by the constitution or the law, therefore, any A restriction imposed by the administrative authorities is considered a violation of the principle Legality<sup>30</sup>. As subject Administrative control procedures for judicial oversight Administrative, because administrative control decisions and procedures are subject to all the rules of legality that govern all administrative decisions and are subject to judicial oversight. With regard to exercising administrative control, that is, practicing an organizational activity The judge who decides on administrative matters is the one who specifically monitors the control authorities, AN Administrative control actions and procedures, as they are administrative actions, are subject to the oversight of the administrative judiciary. This oversight is achieved using two methods: cancellation oversight and compensation or liability oversight, where the judge relies to impose punishment against violations committed by the authorities on respect for the principle of legality The judiciary also exercises oversight of compensation or full judicial action by interested individuals to demand compensation for the damages and losses they suffered as a result of harmful police actions and procedures. This jurisdiction goes back to the councils previously and to the administrative courts currently<sup>31</sup>. In exceptional circumstances, any society may be vulnerable to these circumstances, such as war, any natural disaster, epidemics, etc., which forces the administration to recognize broader bodies to control powers in an exceptional situation. However, the problem that has been raised in this area is whether executive powers should be restricted by a special law by virtue of their activities in Exceptional cases and the application of special texts The second method requires that the executive authority of Parliament resort to issuing a special law governing its work and activity in exceptional circumstances. And it has Some criticized This method means that exceptional circumstances may occur suddenly, which may hinder the activity of the executive authorities and prevent them from confronting the situation. Exceptional circumstances result in the administration taking exceptional measures to confront the crisis, even

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29 Al-Qahtani, Muhammad bin Hassan: Saudi Administrative Law (What is Administrative Law – Administrative Organization – Public Office – Administrative Decision), previous reference, p.142.

30 Al-Ajami Hamdi Muhammad: Administrative law in the Kingdom of Saudi Arabia (general principles – administrative organization – administrative activity), a comparative study, previous reference, p. 307.

31 MHamad Muhammad Abdo Imam, General Principles in Administrative Control (Comparative Study), first edition, Al-Wafa Legal Library, Alexandria 2014, p.35



if this results in violating existing legal rules. Texts may also intervene to regulate these circumstances, and thus the matter becomes related to accepting the legal legitimacy of the theory of exceptional circumstances, as long as they are regulated by legal texts, meaning that exceptional circumstances and the resulting administration taking exceptional measures that affect public rights and freedoms are considered a legally legitimate issue. If the issue of regulating exceptional circumstances through legal texts has been accepted by many jurists who consider that the crisis can be confronted without departing from the scope specified by the exceptional texts, then the problem that arises here is what is the scope of judicial oversight here, as long as the exceptional circumstances Regulated by legal texts that result in infringement or limitation of public rights and freedoms? Or in other words,<sup>32</sup> Is the principle of judicial oversight in itself an acceptable principle as long as the legal texts are what allowed the administration to carry out exceptional measures? Exceptional circumstances are considered serious, unusual and unexpected circumstances that threaten the safety of the entire state and its territories, such as the event of a war, the serious threat of its occurrence, or the occurrence of armed strife or Natural disasters, or the spread of a deadly epidemic, in these severe and difficult general circumstances, the ordinary laws that were established to confront the normal life of society and the means that they give to the administrative authority are not sufficient to confront these severe circumstances and get out of them to safety, so it is necessary Therefore, the principle of legitimacy should be expanded, so that an exceptional legitimacy is created that includes broader and stronger capabilities and powers for the administration that is primarily responsible for protecting the state and society in the face of these exceptional dangers. It was natural for the field of administrative control to be the first and most important field for applying the theory of exceptional circumstances created by the administrative judiciary in France, given that the state is exposed under these circumstances to severe dangers, which requires strengthening and expanding administrative control powers. The administrative judiciary stipulated four conditions: that exceptional circumstances be actually achieved (a state of war, armed strife, or natural disaster), and that the administration take its measures during the period when these circumstances are achieved and not after their end, subsidence, or actual disappearance. Otherwise, the measure would be an aggression against freedoms that is not justified and would be invalid. The administration's action restricting freedom must be binding and appropriate to what the exceptionality requires. If it is more severe than what the circumstances impose, it becomes illegal. The administration's goal must be to achieve the public interest alone, and not to take revenge on an individual or entity or for political or partisan purposes, otherwise its decision becomes flawed by deviating from authority. The goal of the public interest is the desire to resist exceptional circumstances and speed up the judiciary to seriously disrupt public order, or achieve regularity and discipline in the administration. Performance of public facilities. It can be concluded from the above that these authorities represent a command in the hands of the administration in confronting individuals and affecting their rights, freedoms and activities. It is considered one of the privileges granted to the administration in order to achieve its main mission, which is to achieve public interests and maintain public systems in society. The danger of this authority appears in its close connection with the activity, rights and freedoms of individuals guaranteed by law. This makes it necessary for it to be subject to legitimacy and constant judicial oversight.

#### **The second section: Limits of administrative control authority:**

The general rule is that individuals enjoy the public freedoms guaranteed to them by the Constitution, but it is true. Certain topics include restrictions on these freedoms imposed by the interest of society, and since the basic principle is enjoyment. Freedom and the exception is its

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32.– Maya Muhammad Nizar Abu Dan, *Judicial Oversight of Proportionality in Administrative Decisions*, Modern Book Foundation, Lebanon, first edition 2011, p.64.



restriction. These restrictions must be subject to controls and limits to prevent arbitrariness. Use it. The function of administrative control and what is carried out by administrative control bodies inherently represents a restriction on the freedoms of citizens and their private activities because of the extreme danger this work entails as it affects the private freedoms and rights of individuals. Therefore, it was necessary for this function to be exercised within certain limits, such as preserving Citizens' freedoms and activities. Therefore, the fact that the administration's agencies aim to achieve public order using administrative control means does not mean that achieving this goal should be at the expense of those freedoms, rights and activities, so it is not permissible to infringe upon or detract from them without support from the system. Hence, the administrative authorities, in exercising their control authority, must be keen to harmonize and reconcile personal freedoms with their control authority, so that the latter is exercised within the borders and regulatory frameworks, that is, they must work to find a degree of balance between the control powers as they are restrictions on the freedoms of individuals., He stated that individuals are given the opportunity to exercise their personal freedoms by taking means that ensure the protection of these freedoms and the preservation of public order at the present time. Indeed, their departure from these limits and frameworks in cases of exceptional circumstances does not mean a delay. So that you act absolutely. It is not useful, but rather means remaining committed to the limits of the principle of legality that are appropriate for those exceptional circumstances<sup>33</sup>. Since the function of administrative control is a restriction on the freedoms of citizens and their private activities, in order to preserve these freedoms and those activities, it is necessary for the function of administrative control to be exercised according to defined limits. Just because the administration seeks to achieve public order does not mean that it wastes or detracts from those freedoms or prevents citizens from carrying out their activities. Their activities without legal justification. Therefore, the administration, while exercising its control authority, must take steps to reconcile freedoms with its control authority within legal frameworks. However, if the administration is limited by certain legal limits, sometimes the administration finds itself forced to deviate from those limits in exceptional circumstances to maintain public order. However, this does not mean that it is acting absolutely, but rather it only means that the administration will act within broader limits. Those set in normal circumstances. At the same time, within the framework of legitimacy that suits those circumstances, it should always be considered that freedom is the principle and that controlling restrictions are the exception<sup>34</sup>. It is necessary to set limits to the administration's powers in exercising administrative control powers, through which a balance is struck between achieving the requirements of public order and ensuring the rights and freedoms of individuals. Administrative judiciary rulings have traditionally granted the administration broad freedom to exercise administrative control powers, but in doing so they have subjected it to the oversight of the administrative judiciary from Many ways. Administrative jurisprudence and judiciary have agreed on the necessity of the administrative control authority. . being subject to many controls. Whether in normal circumstances or in exceptional circumstances. The authority of administrative control bodies cannot, under any circumstances, be absolute. These bodies cannot invoke the pretext of maintaining public order for arbitrariness and infringement on the rights and freedoms of individuals, which is what made the regulator alert to this and place several restrictions that must be taken into account by administrative control bodies when exercising its function. The principle of legality in general means that all actions of the state are subject to the legal rule, regardless of the level of this rule, whether constitutional, regulatory,

33 Al-Kholy Omar: Al-Wajeez in Saudi Administrative Law, previous reference, p. 195.

34 Al-Ajami Hamdi Muhammad: Administrative law in the Kingdom of Saudi Arabia (general principles – administrative organization – administrative activity), a comparative study, previous reference, p. 306.



regulatory, or other legal rules that constitute the legal system that constitutes the legal system of the state. Accordingly, restricting the control authority to the principle of legality means that it is subject to the law in all its actions, actions and decisions, and in all aspects of the activity it carries out, and this results in the invalidity of any action or action taken by the control authority that violates the system or goes beyond it. Its binding rules<sup>35</sup>. The principle of legitimacy is one of the most important legal elements of the state, and it means adherence to the system and submission to its provisions. Submission here is not limited to the mere submission of individuals alone to the provisions of the system, but rather extends to include all public authorities in the state. The principle of legality relates to the limits of state authority and its subjection to binding rules. Therefore, this principle is considered the basic guarantee for protecting the rights and freedoms of individuals from arbitrary administration. If the administration must adhere to the principle of legality in general when undertaking any activity. Administrative. This is especially true due to the impact of that Authority over the , when Exercising its powers as a controlling authority rights and freedoms of individuals, as it is not enough for individuals alone to be subject to the law in their relationships. Private. Rather, it is necessary for the state's governing bodies to also submit to it, in a way that is. The actions of these bodies and their various relationships are consistent with the provisions of the law and within its framework. As. The principle of legality generally means the supremacy of the rule of law in a state so that its provisions and rules are superior. Above all the will of the ruler or ruled<sup>36</sup>. In application of the principle of legality in the field of administrative control in the Kingdom of Saudi Arabia, all administrative control authorities, when issuing control regulations to regulate public rights and freedoms, must not violate Islamic Sharia and the rules stipulated in the Basic Law of Governance and Regulations. If the control procedure is represented by individual decisions, it must not. It is issued in violation of Islamic law, rules and regulations in application of the principle of gradual legal rules. Administrative control authorities must adhere to the principle of legality in all their procedures and actions, and if they violate that principle, their work becomes worthy of cancellation. From this standpoint, the administrative authority is subject to the law in everything. Its actions or actions, and the decisions it takes in all aspects of the activity it carries out. With it. This is what is called administrative legitimacy. The rules of legality are governed by the principle of gradation of legal rules. At the top of them are the rules of the constitution. Treaties. The law passed by Parliament (or orders taken by the President of the Republic in cases Constitutionally defined). Then the general principles of law approved by the administrative judiciary and settled in its rulings. As part of his monitoring of the administration's work (for example, defense rights, where no one can be prosecuted on any charge). Without enjoying his right. Then come the regulations (sub-legislation) of all kinds. Its source.<sup>37</sup> One of the ) to Defend himself controls for the validity of the seizure procedure is that: The following conditions must be met in the seizure procedure for it to be legitimate. If the law addresses the regulation of a public freedom. The decision issued by the executive authority. It is considered a regulatory decision, and therefore it does not have the right, in this capacity, to amend the provisions of the law it was intended to implement. Adding new restrictions on freedom. The control authority may not issue individual control decisions without relying on general regulatory rules. Contained in law or regulatory decision. The regulatory decision must be published in order to oblige individuals to implement it. Provided that publication is in accordance with the law. It is also not permissible for a regulatory regulation issued by a lower authority to violate a regulation issued by a higher

35 Al-Masry Sabah: Al-Wajeez in Saudi Administrative Law, previous reference, p.231.

36 Castagne; le controle juridictionnel de la legalite des actes de police administrative, these, Bordeaux, L.G.D.J, 1964.

37 Al-Ajami Hamdi Muhammad: Administrative law in the Kingdom of Saudi Arabia (general principles – administrative organization – administrative activity), a comparative study, previous reference, p. 306.

authority. In accordance with the principle of gradual legal rules. There should be equality among all citizens before administrative control procedures. In application of this, administrative control bodies must adhere to the limits of legality in all their actions. It is committed to the Constitution not to infringe on public rights and freedoms, the Basic Law of Governance was keen to emphasize their protection in accordance with Article 26 of it, which stipulates that "the state protects human rights...According to Islamic law," the Saudi constitutional system was not satisfied with that, but rather listed in Article 27 of the Basic Law of Governance some rights, as the article required that "the state guarantees the right of the citizen and his family in cases of emergency, illness, disability, and old age, supports the social security system, and encourages institutions and individuals to contribute to charitable work." ". He also obligated the state to facilitate the right to work, and to sponsor sciences, literature and culture that are concerned with encouraging scientific research, preserving the Islamic and Arab heritage, and contributing to Arab and Islamic civilization. He was also keen to protect the right to education, health and a clean environment, as well as the right to Manna, inviolability of the home, telegraphic and postal correspondence, and telephone intelligence. In addition to the administrative control authorities' commitment to the provisions of the Constitution, the content of the principle of legality requires their respect for the laws, out of respect for the principle of gradual legal rules, which is considered one of the most important legal elements of the state. Accordingly, administrative control authorities must not violate or detract from the legal regulation of a particular freedom or right, otherwise their work will be subject to abuse of power and will be subject to cancellation and invalidation. In addition, administrative control authorities are committed to all other sources of legitimacy, whether written or unwritten. In addition to the obligation of administrative control bodies to respect the principle of legality, they are also subject to several other restrictions as they exercise the administrative control function, represented by their commitment to the legally specified goal. Disclosing the reason for the decisions taken to maintain public order, and the proportionality and appropriateness between the means used and the action it faces. The commitment of administrative control bodies to the legally defined goal of protecting public order, in all its aspects, is that if these bodies deviate from that and aim for a purpose other than that, such as achieving financial profit, or benefiting other people, then their action or decision is illegal and flawed by the defect of abuse of power, which This makes it subject to cancellation by the administrative judge<sup>38</sup>J. As for disclosing the reason for the decision, it means oversight Reason for the seizure measure Every action or measure taken by administrative control authorities must be based on a real reasonJustifies it .The reason is the fact (physical or legal) that drives the decision or measure, and the judiciary monitors itAdministrative: The extent of this incident, its seriousness, and its threat to public order If it turns out that these reasonsNot existIn this case, the decision has lost its legal basis on which it is based, which justifies its cancellation. The administrative judge also examines the legal description of the incident Which would justify issuing the procedureThe adjuster.It also means the factual or legal situation that prompted the administration to take the decision, and therefore the reason must precede the decision and be considered the basis for its existence.The basic principle is that every decision has an existing and correct reason, and therefore the administration is not obligated to mention the reason for its decision, and the burden of proof falls on those who claim Contrary to that. Although it applies to all administrative decisions, in the field of administrative control, the judiciary has established a presumption to the effect of assuming that control decisions are not based on a reason until the administrative authority proves otherwise, and the reason for the decision is required to exist as soon as this decision is issued, and to be correct.All of this is subject to judicial oversight to verify the existence and validity of the reason. Another legal control that administrative control bodies must adhere to is the proportionality of the method used in terms of its necessity and suitabilityThe

38 Al-Masry Sabah: Al-Wajeez in Saudi Administrative Law, previous reference, p.229.





degree and gravity of the facts that threaten public order. The means used by the administrative control authorities must be proportional to the material circumstances that prompted them to intervene. It is not enough for the means to which the administration resorted to be legitimate in its own right, but rather the administration must resort to choosing the means that is compatible with the reason for its intervention and is proportional to the material circumstances of the administration. That is, the procedure must have been issued within the limits that guarantee the protection of public order, without exceeding the established limits. Without detracting from and unjustifiably restricting the freedom of individuals. This also means that the administrative control authorities are committed to taking procedures and measures to the extent necessary to maintain public order, without going beyond that, and their obligation to do so is in normal or exceptional circumstances. If the administration's powers expand in exceptional circumstances, however, one of the basic principles governing the theory of exceptional circumstances is the principle of necessity estimated to its extent, so it is not permissible. The administrative control body, for example, uses measures or procedures that are extremely harsh or severe at a time when less burdensome means and measures could have been used. The judge ascertains the extent of proportionality between the gravity of the restriction on freedom on the one hand and the gravity of the threat to public order on the other hand. The existence of a serious threat to public order justifies a severe restriction of public freedom, but with the presence of minor disturbances do not justify at all a severe restriction of freedom, so the well-known principle that: Necessity is appreciated as much as it is. There must be a proportionality between the threat to public order and the control measures taken by the administration to confront it. Otherwise, these measures are illegal. The administration may not use harsh and strict means to confront non-dangerous circumstances, although it may take some precautionary measures that are not characterized by cruelty, such as quickly searching fans when they enter sports stadiums to ensure that no one is carrying knives or the like. In the end, the matter is subject to the supervision of the administrative judiciary, which exercises important control over the administrative control authority. Both in terms of adherence to the reasons that led to it to intervene or the goals you seek to achieve, if the administrative authority is used for purposes other than those of the public, the administrative judge rules to cancel it. It is recognized in jurisprudence and jurisprudence that decisions on the measures to control illegality taken by administrative control bodies are subject, like other administrative decisions, to the oversight of administrative judiciary. This is out of respect for the principle of legality. Rather, it is better than others to be subject to this oversight due to its connection to the rights, freedoms and private activities of citizens. Cancellation oversight of the goal or objective is of great importance in judicial oversight of the legitimacy of administrative control decisions, as management may use its authority to achieve an illegal goal. Whether by targeting a goal far from the public interest or by seeking a goal different from the goal he set for it. Law: This defect is called deviation from authority. This is one of the most subtle defects because the judge's task is arduous and sensitive to prove this defect. He searches for the hidden motives and motives that led to the decision. If he takes it, the administration employee made his contested decision driven by purposes not aimed at protecting public order, it was. The purpose of the decision is to protect an individual interest, so it violates the rule of privatization by using authority in other matters. The purpose for which it was intended must be cancelled. Hence, the characteristics of the defect of deviation in the use of power can be determined by linking the defect of misuse of power to the purpose of the decision. It makes it a psychological defect. The source of the decision and what he wanted to achieve in the end by issuing it to him. It is therefore related to the subjective and personal elements of the decision. The defect of deviation in the use of authority is intentional or intentional. Meaning that the source of the decision must be in bad faith. He knows that he is seeking to achieve an end that is contrary to what the law specifies. And his intention may have been to go for it. Hence, if the source



of the decision does not have this intentional intent. This defect does not occur, no matter what it is. In addition to the right of appeal, the damage to individuals resulting from the decision<sup>39</sup> allows individuals to file a cancellation lawsuit, they also have the right to file a claim for compensation for material or moral damage resulting from errors in the decisions of control bodies. This claim is subject to general rules, meaning that the three elements must be present, which are error, damage, and the causal relationship between them. Estimating the seriousness of the error and damage is subject to administrative jurisdiction. It also does not neglect to mention the disciplinary responsibility of members of administrative control bodies for the illegal acts they commit or their abuse of authority. This is what was decided by the Saudi Internal Security Forces Law issued in 1384 AH, which stipulated the disciplinary responsibility of police officers in the event that they abuse their disciplinary authority or abuse the public. The penalty may reach up to a time after work<sup>40</sup>. Exceptional circumstances mean "the presence of an imminent danger or abnormal circumstance threatening the nation and threatening its security." And his safety. Equally, this danger may result from invasion, external aggression, or disobedience. Armed forces, civil war, internal disturbances, or general calamities. In such exceptional circumstances, normal administrative control powers are not sufficient to maintain order. In general, the administration's powers are expanded to meet these circumstances. Also, some administrative decisions that are illegal under normal circumstances. It becomes legitimate as a result of these exceptional circumstances. To maintain public order and the functioning of public facilities. Despite the exceptional circumstances, however, judicial oversight remains based on actions. And the decisions of the administrative control authorities, because the principle of legitimacy is not excluded or suspended and stops, but rather is implemented. It is expanded by the judge and under his supervision out of respect for the rule of law, and his oversight of the police authority varies. During exceptional circumstances, about his control over her under normal circumstances. Extraordinary circumstances occur suddenly and unexpectedly, so should they. There is a special law to confront these circumstances, whether they precede their occurrence or whether the executive authority must resort to the legislator<sup>41</sup> to issue a law to confront it whenever one of these exceptional

The first method is characterized by the existence of a special law for these circumstances. It occurs in emergency circumstances that precedes their occurrence. And that would do it to enable the administration to apply administrative authority to confront it by declaring martial law or a state of emergency. The provisions of the law quickly and effectively to eliminate the danger resulting from these circumstances. There is a need to return to the legislative authority to issue legislation to that effect. Don, unforeseen circumstances. The second method is to organize the administrative control authority. The first method is completely different, as it is different from, during exceptional circumstances. Parliament is based on confronting each case individually with a special law issued by him. Based on the government's request to expand its powers to the extent that enables it to confront this unusual circumstance, so it is called (the law of circumstances) or the emergency law. The advantage of this method is that Parliament examines each case and authorizes the law. In accordance with the law, the government to take the necessary exceptional measures to confront it. It issues for this purpose. This method prevents the administration from citing dangers or the real or unusual abnormal circumstances that may meet the characteristics of a ban. It provides serious and advance oversight of the government's assessment of the circumstance. Exceptional circumstance. It also achieves a largely effective protection of public existence.

39 Al-Kholy Omar: Al-Wajeez in Saudi Administrative Law, previous reference, p. 187.

40 The Internal Security Forces Regulations issued in 1384.

41 Boukrit Omar, Judicial oversight of the element of reason in administrative control decisions, Journal of Human Sciences, Faculty of Law, Mentouri Brothers University, Constantine, Algeria 2016, p.71-72.



Evaluate the situation and ensure the existence of the danger freedoms, as it enables Parliament to or circumstance that requires issuing the necessary law to confront it :What is confirmed Parliament expressed the seriousness of the government's request for the availability of a case of The English judiciary shall consider EXCEPTIONAL necessityProvide her and delegate powers to her all procedures exercised by the executive authority in .This situation is with suspicion and caution<sup>42</sup> The French Council of State invented the theory of exceptional circumstances, or what is known as On the occasion of World War IIIIt was known as war powers, and the Council the theory of necessity Society can be exposed to it in To include every period of intensity of State expanded this theory Confronting cases for which there was no text, With the aim of enabling management to peacetime That is why it is called the judicial .he was earlier than the legislator in developing this theory They are to expand the theory, and this theory is characterized by two characteristics administration's powers in the field of administrative control alone So that it can take the necessary measures and procedures to preserve the entity of the state and maintain security and public order That is, placing severe restrictions on Individual freedoms extend to the arrest and detention No matter how broad the The administration's work is also subject to judicial oversight .of violators However, it is not an absolute power that administration's powers are in these circumstances The administrative judiciary has placed restrictions on the exceptional .escapes judicial oversight Individual circumstance so that the administration does not release its freedom in violation freedoms. There are a number of restrictions, the first of which is that the seizure measure must have been taken in exceptional circumstances, as the seizure must be carried out in order for it to to have TakenDuring exceptional circumstances, , be within the framework of exceptional legality the control authority mustTo prove that situations or circumstances occurred :It would cause a And in order of that, when it is disturbance to public order and was not included in ordinary laws The administrative judge has a caseIn which the administration claims a state of presented Through it, the issue is first and And MEASURES necessity to justify the measures it has taken Light of the temporal and spatial foremost a matter of facts assessed by the administrative judge in In addition to the second restriction, which is the necessity and .,conditions that surround it necessity of the exceptional measure, the administrative judge verifies that confronting It is not covered by current legislation, exceptional circumstances requires an exceptional measure If it Statism which means that the exceptional procedure is necessary and requires requirements was proven to him that the administration could have overcome the situations resulting from the stipulated in The exceptionalism that exists with the powers and means it possesses circumstances An exceptional measure not permitted by these applicable legislation, however taken It rules to cancel this procedure. The third restriction is the suitability of the control legislations procedure for exceptional cases, as it must be The action taken by the administration to confront This required by these circumstances exceptional circumstances is appropriate and appropriate Or negligence. The behavior must be sufficient to address these conditions without excess administrative judiciary monitors the administration's assessment of the importance and seriousness This is to verify the appropriateness of the of the disturbances under those circumstances procedure by which the administration restricts the freedoms of individuals and whether it is Resorting to a lighter measure instead of the measure taken to achieve that goal. It can possible

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42 Jabour Adila, monitoring the legality of the decision Administrative, a letter to obtain a diplomaJustyR in Public Law, Faculty of Law and Political Science, Abderrahmane Mira University – Bejaia–, 2014–2015, p 57.

be concluded from the above that it is a condition for the legality of a measure taken in It must be necessary and appropriate to what For freedom exceptional and restricted circumstances Circumstances have become If it is more severe than what you impose these circumstances require The administration's goal of the procedure must be to achieve the public interest :Alone illegal There is no revenge against an individual, entity, or political or partisan opposition, otherwise its By deviation from authority, The goal of the public interest in this decision will become flawed Exceptional and rapid elimination of serious context is the desire to resist Circumstances The public disturbance of public order or achieving discipline in the performance of facilities .protects the principle of regular and steady operation of the public facility<sup>43</sup>

### CONCLUSION

To achieve the principle of legitimacy realistically and effectively, effective, permanent and effective oversight must be created over the administration's work, in order to guarantee the rights and freedoms of individuals by providing coordinated and balanced means, so that tight oversight does not paralyze the administration's activity, and light oversight may lead to arbitrariness of the administration, which It requires subjecting its actions to different types of oversight. Judicial oversight is the most important form of oversight of the administration's work The judiciary is considered the body most capable of protecting the principle of legitimacy and the rights and freedoms of people, if it achieves independence in performing its duties. This independence gives it a distinguished position among people, strengthens the foundations of the law, develops a sense of justice, reassurance, and stability, and so on The judiciary is the actual and basic guarantee for the protection of public rights and freedoms, by obligating the administration to submit to the law. One of the drawbacks of judicial oversight of administrative control work is the lack of judges specialized in examining and adjudicating administrative disputes, as the ordinary judge cannot know and disclose the peculiarities of administrative work, the circumstances surrounding it, the nature of the administration's discretionary authority, as well as the extent of his ability to exercise diligence in achieving a balance between rights and freedoms. And maintaining public order. What is also taken into account about judicial oversight in the stage preceding the final settlement of administrative disputes is that the period for adjudicating cases is long, which leads to a negative impact on the stability of administrative work on the one hand, and increases the effects of illegal administrative control actions on the rights and freedoms of people on the other hand. Other. The study targeted the issue of judicial oversight of administrative control work, through which we find that administrative control is a set of measures taken by the authorities legally authorized to exercise this control in order to achieve the maintenance of public order, with its three elements: public security, public tranquility, and health.

#### First: Results:

- 1- Judicial oversight is one of the most important forms of oversight in Iraq because the judiciary is the body authorized to protect and maintain the principle of legality .
- 2- Administrative control powers are a necessary function in society because they restrict the activities and freedoms of individuals for the purpose of maintaining public order .

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43 Khalifi Muhammad, Judicial controls on the discretionary power of administration, a comparative study, a dissertation to obtain a doctorate in public law, Faculty of Law and Political Science, Abu Bakr Belkaid University, Algeria, 2015\_2016, p.163.



3- These powers have expanded limits under any exceptional circumstances, and through them several modern rules of legitimacy emerge, namely the exceptional legitimacy of administrative control powers .

#### **Second: Recommendations:**

1- Not to expand the use of the powers granted to it in the field of administrative control under any exceptional circumstances except in cases of maintaining public order .

2- Respect the laws and constitutional texts that grant it all powers and not exceed the limits.

3- Establishing a specific mechanism to select those responsible for implementing laws, especially those related to administrative control, and for them to be among the best capable of understanding the regulations and objectives of administrative control.

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