

Means of protecting human rights in light of administrative law in the legal systems of the European Union, Iraq, Egypt and Iran

Ahmed Jabbar Khudair Al-Daba^{1*}, Dr. Mohamad Setayeshpur²

¹PhD Student, Faculty of Law, University of Qom, Qom, Islamic Republic of Iran

²Associate Professor, International Law Department, Faculty of Law, University of Qom, Qom, Islamic Republic of Iran

***Corresponding Author:** Ahmed Jabbar Khudair Al-Daba

Abstract:

This research aims to clarify the concept of administrative control and the limits of its legitimacy, analyze the role of administrative courts in overseeing administrative actions and the enforcement of judicial rulings, and reveal the effectiveness of the legal and judicial mechanisms established to protect human rights in the systems under study. It also seeks to highlight the similarities and differences between these systems in light of recent constitutional and judicial developments. The research's significance lies in its direct connection to the protection of human rights, a fundamental pillar of the modern rule of law, and in the importance of administrative law as the instrument through which the administration exercises its powers over individuals. Furthermore, the study's importance is underscored by its focus on the effectiveness of judicial oversight of administrative actions. The research employs a comparative approach as its primary methodology, comparing the legal and judicial frameworks for human rights protection in the European Union, Iraq, Egypt, and Iran. A descriptive-analytical approach is also utilized to analyze constitutional and legislative texts and judicial rulings related to administrative control and the enforcement of administrative court judgments. The research arrives at several conclusions, most notably that all the legal systems under study agree on granting the administration administrative control powers to maintain public order, but they differ in the extent to which these powers are subject to legal constraints and safeguards. The study also showed that the European Union is distinguished by its advanced mechanisms for judicial oversight and enforcement of judgments related to the protection of human rights, while the Iraqi, Egyptian, and Iranian systems still face challenges concerning the effectiveness of judicial enforcement and the limits of oversight of administrative actions. Furthermore, it was found that administrative justice represents the fundamental guarantee for the protection of rights and freedoms; however, the effectiveness of this protection depends on the degree of judicial independence and the existence of effective legal mechanisms to compel the administration to implement judicial rulings and respect the principles of legality and the rule of law.

Keywords: Human Rights, Administrative Law, European Union, Iraqi Law, Egyptian Law, Iranian Law.

Introduction:

Human rights are among the fundamental pillars of the modern rule of law, representing the true guarantee for preserving human dignity and protecting fundamental freedoms against the arbitrary actions of public authorities. Recent decades have witnessed a remarkable development in international, regional, and national attention to human rights, through the conclusion of international conventions and the establishment of judicial and administrative mechanisms aimed at strengthening the legal protection of these rights. Administrative law stands out as one of the most important branches of public law directly related to the protection of human rights, as it regulates the activities of public administration and defines the limits of its powers and jurisdictions. Furthermore, it plays a role in imposing legal oversight on administrative actions and preventing the abuse of power. While public administration enjoys broad privileges that enable it to achieve the public interest, these privileges may sometimes infringe upon the rights and freedoms of individuals. This necessitates the existence of effective legal mechanisms that ensure a balance between the requirements of the public interest and the guarantee of respect for human rights.

The research problem lies in questioning the effectiveness of human rights protection mechanisms within the framework of administrative law in the legal systems under study, and the extent to which these mechanisms can limit the arbitrariness of public administration and ensure respect for fundamental rights and freedoms. The research also raises the issue of the disparity between different legal systems in regulating judicial and administrative oversight mechanisms, and the extent to which this disparity impacts the actual protection of human rights. Furthermore, it questions the adequacy of available legal safeguards against unlawful administrative decisions.

The importance of this research stems from the importance of human rights itself, as it is directly linked to the principles of justice and the rule of law, as well as the importance of administrative law as the legal instrument that regulates the relationship between the administration and individuals. The study's significance also lies in highlighting the role of judicial and administrative oversight in protecting rights and freedoms, and in drawing on comparative experiences to develop national legal systems and strengthen individual safeguards against public administration. The study also contributes to clarifying modern trends in the field of human rights protection and demonstrating the impact of constitutional and judicial developments on enhancing oversight of administrative actions and achieving a balance between power and freedom.

This research aims to clarify the concept of human rights protection mechanisms within the framework of administrative law and analyze the legal foundations upon which such protection rests. It also examines the role of administrative courts and judicial oversight in safeguarding public rights and freedoms, highlighting the similarities and differences between the European Union, Iraq, Egypt, and Iran in regulating legal protection mechanisms. Furthermore, the research seeks to assess the effectiveness of the established legal and administrative mechanisms for human rights protection, identifying legislative or practical shortcomings that may limit the effectiveness of this protection. Ultimately, it aims to offer proposals that contribute to developing the legal system and strengthening human rights guarantees in the systems under comparison.

The research employs a comparative approach, comparing the legal systems of the European Union, Iraq, Egypt, and Iran in the area of human rights protection within administrative law, identifying points of agreement and disagreement, and analyzing the reasons for these differences. The research also utilizes a descriptive-analytical approach, examining relevant constitutional and legal texts and judicial rulings, and analyzing their effectiveness in achieving legal protection for individuals. Therefore, this research is divided into:

Section One: Administrative Control and its Limitations

Administrative control is a modern administrative term that is constantly evolving and changing, in accordance with the ongoing transformations within state institutions. Public order, which forms the basis of administrative control, is characterized by a high degree of flexibility, making its definition relative and subject to variations across time and place, and even within a single state, depending on the prevailing ideology, the nature of society, and its specific circumstances.

Requirement One: The Legality of Administrative Control Procedures and their Limits in Protecting Public Order

Given the importance of public order, most countries have ensured that their constitutions include provisions affirming the protection of public rights and freedoms. They have also enacted laws and regulations that govern the functioning of the state and guarantee a balance in the relationship between public authority and individual rights. Hence, the role of administrative control has emerged as one of the fundamental activities exercised by the administrative authority to maintain public order in all its aspects, ensure the regular and continuous operation of public services, and protect security and peace. However, its formulation and content vary according to the legal and political environment of each country. In Iraqi legislation, the legislator did not provide an explicit definition of administrative control, but he clearly referred to the tasks and functions through a number of laws, the most important of which is the repealed Police Security Service Law No. 149 of 1968, which stated that: "The police shall carry out the tasks of maintaining public order, internal security, preventing the commission of crimes and tracking down their perpetrators, and implementing laws and judicial regulations," and the Ministry of Interior Law No. 183 of 1980, amended by Law No. 20 of 2016, which indicated the ministry's jurisdiction to contribute to consolidating security, combating crime, and adopting scientific methods in preventing it, which confirms that administrative control includes preventive and organizational tasks aimed at preserving public security, as the Constitution of the Republic of Iraq of 2005 referred to in Article (Fifth/Second). These texts indicate that administrative control in Iraq is based on a preventive and regulatory concept aimed at ensuring public security and implementing legislation, even if its elements are not precisely defined. In Egypt, however, Police Authority Law No. 109 of 1971, as amended by Law No. 4 of 2023, stipulates that: "The police are responsible for maintaining public order and..."

The second requirement: Legal and judicial restrictions on the authority of administrative control in protecting rights and freedoms.

For administrative control decisions to be enforced against individuals, several conditions must be met, as stipulated by legal scholars and administrative jurisprudence. These conditions are necessary to legitimize the actions taken by the

control authority in this regard. The absence of any of these conditions renders those actions illegitimate and subject to annulment. These conditions can be summarized as follows:

The enforcement must pertain to an administrative decision that was issued lawfully and fulfilled all its elements and requirements. Regardless of whether the administrative decision to be enforced was based on a provision in the law or regulations, and by implication, the administrative control authority cannot enforce its own illegitimate administrative decisions. All actions taken by the administrative authority to enforce an illegitimate administrative decision are considered null and void and must be annulled.

Individuals' voluntary refusal to comply with administrative control decisions prevents the administrative control authority from forcibly enforcing its decisions against individuals unless their voluntary refusal is proven. In such a case, the individuals' refusal justifies the administrative control authority's resort to coercive enforcement. To establish individuals' refusal to comply with administrative control decisions, the administrative body must grant them a suitable period for implementation after issuing an order for compliance. If this period expires without implementation, the control authority may proceed with coercive enforcement. An exception to the requirement for the administrative control authority to issue an implementation order and grant individuals a suitable period is in cases of necessity. In such cases, there is no impediment to the direct enforcement of administrative control decisions to maintain public order, which could be severely disrupted, potentially causing irreparable harm if the control authority were obligated to enforce such an obligation.

The enforcement of administrative control decisions must be carried out with the minimum necessary procedures and means required to maintain public order, and with the minimum amount of force necessary to achieve this objective, without the need for the enforcement authority to resort to unnecessary additional measures. Furthermore, the enforcement authority may not arbitrarily use force without justification; if it does so, the procedures it employs are unlawful and subject to annulment.

Finally, it must be noted that the administrative enforcement authority may resort to the enforcement of its administrative decisions against individuals who fail to comply, provided the aforementioned conditions are met. However, it is not obligated to pursue this course of action whenever it deems it necessary, as it may seek a final and binding judicial ruling to enforce its administrative decisions. However, if the aforementioned conditions are not met in the enforcement of administrative control decisions, there is nothing to prevent individuals from resorting to the judiciary to challenge the unlawful procedures carried out by the control authority in order to have them overturned and their consequences nullified, thus preventing any harm that may befall individuals as a result.

The judiciary's obligation to justify its decisions and its prohibition of resorting to unlawful methods to justify them are two sides of the same coin. It is impermissible to resort to illegal or unlawful methods to obtain evidence under the pretext of justifying a judicial decision. In criminal proceedings, both the justification and basis of the decision are relevant, as are the methods used to obtain that evidence.

In Case No. 9609982125600492, Branch 1091 of the Second Criminal Court of the Ershad Judicial Complex in Tehran, the Revolutionary Prosecutor's Office of Tehran prosecuted the defendant. The primary reason given by the prosecution was a breathalyzer test conducted on the defendant, which showed a blood alcohol content of approximately 30%. This testimony indicated his guilt, and the case was referred to the court for consideration. After taking into account the defendant's denial, the fact that the alcohol test result is relative and subject to error, the presence of doubt, the rule of law, and the presumption of innocence, the court acquitted him of the charge in Judgment No. 9609972127001354 dated 22/9/1396. This example of a judgment demonstrates that the court must issue its rulings solely within the framework of the law and legal evidence. In criminal proceedings aimed at uncovering the truth, no means, even unjustified ones, may be employed. Therefore, a defendant cannot be compelled to confess in order to uncover the truth, even if such a confession is revealing and constitutes the basis for a judicial ruling. Failure to adhere to the reasoned decision of the judicial authority would undermine public trust and confidence in the judiciary.

With the adoption of Protocol No. 16 on 2 October 2013, the jurisdiction of the Court of Justice of the European Union was extended to provide advisory opinions to domestic courts on administrative control. According to Article 1 of this Protocol, the highest domestic court of any State Party may request an advisory opinion on the interpretation or application of any article of the Convention in a case before it. The introduction of this new mechanism clearly impacts

the judicial proceedings of States Parties. For example, in some cases, it leads to the suspension of domestic proceedings pending the issuance of the advisory opinion, or, in order to accurately implement the advisory opinion process, the domestic court is required to provide detailed information on the stages of the proceedings and, potentially, on persons subsequently involved in the proceedings. Although advisory opinions, according to Article 5 of the Protocol, are not binding, the party requesting the opinion is expected to inform the Court of its consequences and effects on domestic proceedings and to send a copy of its final judgment in that case. Furthermore, the Court's guidelines for the implementation of Protocol No. 16 are formulated in such a way as to allow it to periodically review the implementation of these guidelines by States Parties.

The second requirement: Legal means to compel the administration to respect judicial rulings.

The purpose of issuing a judicial order is to issue an order or ruling that obligates the administration to perform a specific action or refrain from performing it. Thus, an order differs from the purpose of specifying the obligations imposed by a judicial ruling on the administration. Orders also differ in their meaning from merely declaring the right of the party in whose favor the ruling was issued to a specific legal status. All of this is not considered a judicial order directed to the administration because it does not contain an explicit and strict order obligating the administration to perform a specific action or refrain from it. Rather, it is the purpose of applying the rule of law to the dispute presented before the administrative judge and determining the right of the party in whose favor the ruling was issued to the rights or legal status. In contrast, Arab jurisprudence has addressed orders issued by the administrative judge to the administration, but it has been divided into two groups regarding the connection between the order and the problem of implementing judicial rulings. The first group held that the order and the implementation of judicial rulings are two separate matters, but rather they are distinct in terms of the entity and time of their emergence into legal existence. The issue of implementing the judicial ruling is a matter that concerns the administration against which the ruling is issued, while the order is a matter that concerns the administrative judge. That is, the problem of implementing judicial rulings is subsequent. The issue of a judicial order arises only after the judgment is fully issued and communicated to the administration.

The other side argues that the order issued by the administrative judge and the problem of implementing judicial rulings are two intertwined issues. That is, the order is an integral part of the judicial ruling. Anyone who examines the rulings issued by the administrative judge will find that they are nothing more than orders directed to the administration to perform a specific action or refrain from performing it. For example, a ruling for compensation is, in reality, an order to the administration to issue another decision that is valid and free from the defects that led to its annulment. This leads to the conclusion that the administrative judge's role is not limited to clarifying the law, but extends to ordering what the administration must implement.

In Iraqi legislation, neither the Iraqi State Council Law nor the Kurdistan State Council Law included any provision for a coercive fine. Because the Iraqi administrative judiciary extends its oversight of the administration's actions by canceling the unlawful administrative decision, and determines the procedure necessary to implement the cancellation ruling and issues binding orders to the administration to implement it, we did not find in the rulings of the administrative judiciary its adoption of the coercive fine as a means to compel the administration to implement the administrative rulings issued by it. However, in the texts of the Iraqi Civil Law, the provisions of the coercive fine were organized under the title of compulsory execution, as mentioned in the text of Article (253), which stipulated: "If the specific performance of the obligation is not possible or appropriate unless it is carried out by the debtor himself, and the debtor refuses to perform, the court may, at the request of the creditor, issue a decision obligating the debtor to perform this performance and to pay a coercive fine if he remains refusing to do so." Article (254) of the same law states that if specific performance is carried out or the debtor insists on refusing to perform, the court shall definitively determine the amount of compensation that the debtor is obligated to pay, taking into account the damage suffered by the creditor and the obstinacy that began from the debtor. We have observed that the administrative judiciary, in most of its rulings, is careful to clarify the procedures that the administration must follow to ensure the correct implementation of its judgments. An example of this is the decision of the General Disciplinary Board (currently the Civil Service Court), which stated: "Upon review and deliberation, and in response to the plaintiff's clarification of her claim in the session of 5/22/2011, she stated that she submitted a promotion request on 10/10/2011, which was rejected on 1/20/2011. Since the plaintiff filed her claim on 1/30/2011, the claim is therefore within the legal timeframe stipulated in Paragraph (3) of Article (59) of the Civil Service Law No. (24) of 1960, as amended, and is formally accepted by this body. Upon further consideration of the merits, the Board noted that the plaintiff is an employee of the Integrity Commission and was promoted to the third grade by virtue of Ministerial Order No. (83) dated 1/24/2006, effective 1/11/2005. Therefore, she is entitled to promotion to a higher grade." Upon completion of the promotion

period on 1/9/2009 and the fulfillment of the other conditions, and given that the defendant's lawyer argued in his brief submitted at the session of 24/7/2011 that obtaining the grade claimed by the plaintiff requires a minimum of (23) years of service, as stated in the Ministry of Finance's annual report and other instructions, the Council found that the law specifies the conditions for employee promotion in paragraph (2) of Article (6) of the State and Public Sector Employees' Salaries Law No. (22) of 2008. Therefore, the department may not refuse to promote an employee once the legally stipulated promotion conditions are met, on the grounds that their previous promotions did not fulfill the service period requirement. For the foregoing reasons, the Council unanimously decided to rule obligating the defendant to promote the plaintiff to the second grade, effective from the date of entitlement, and to order the defendant to bear the expenses. The judgment was issued pursuant to Articles (156), (161), and (166) of the Civil Procedure Law, in the presence of the parties, and is subject to appeal before the General Assembly of the State Council. It was publicly announced on [date]. November 13, 2011

The European Court of Human Rights, particularly after the entry into force of Protocol No. 11 to the European Convention on Human Rights, emphasized the importance of enforcing judgments, compared to other remedies such as compensation, in recognition of the Committee of Ministers' responsibility for their implementation. Some member states, such as the United Kingdom, have responded by directly enforcing Court judgments within their judicial systems, while others, such as Turkey, have established human rights mechanisms allowing individual appeals before their constitutional courts.

The German Federal Constitutional Court examined the relationship between the European Court of Human Rights and the domestic legal system in two cases. In the "parental custody" case, the German Constitutional Court stated that German courts would enforce the decisions of the European Court.

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