

The Administrative Sanction in the Doctrine of Public Administration**العقوبة الإدارية في فقه الإدارة العامة**

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<https://orcid.org/0009-0009-3768-7030>**Date of send:** 06/02/2025**date of acceptance:**12/12/2025**date of publication:** 29/12/2025**Abstract:**

General administrative penalties enhance administrative performance evaluation by allowing the administration to impose sanctions on individuals, whether they have a functional or non-contractual relationship with it, these penalties are essential due to their significance and necessity in addressing vital societal matters, their primary goal is to protect public order, including public security, public health, and public tranquility.

They serve as legal restrictions imposed on individuals to regulate their activities, by doing so, they help maintain social stability and ensure compliance with administrative regulations, and ultimately, these sanctions balance individual freedoms with the need for organized governance.

Keywords: administrative penalties, administration, public order, freedoms, rights

ملخص:

تهدف العقوبات الإدارية العامة إلى تعزيز تقييم الأداء الإداري من خلال منح الإدارة سلطة فرض العقوبات على الأفراد، سواء كانت تربطهم بها علاقة وظيفية أو لم تكن لهم أي علاقة تعاقدية معها، وتعد هذه العقوبات ضرورية نظرا لأهميتها وحتميتها في معالجة القضايا الحيوية في المجتمع. يتمثل هدفها الرئيسي في حماية النظام العام، بما يشمل الأمن العام، والصحة العامة، والسكينة العامة، كما تعد قيودا قانونية تفرض على الأفراد لتنظيم أنشطتهم، ومن خلال ذلك، تساعد هذه العقوبات في الحفاظ على الاستقرار الاجتماعي وضمان الامتثال للأنظمة الإدارية، وتساهم بذلك في تحقيق التوازن بين الحريات الفردية والحاجة إلى حوكمة منظمة.

الكلمات المفتاحية: العقوبة الإدارية، الإدارة، النظام العام، الحريات، الحقوق.

Introduction :

The public administration exercises four fundamental functions: planning, organizing, directing, and controlling. Through the practice of these functions, the administration aims to organize society, meet the needs of individuals and groups, and enforce laws. It generally employs preventive methods and techniques as a rule in carrying out its duties. Administrative decisions imposing sanctions are one of the necessary means to achieve these objectives. These administrative decisions, once issued to impose sanctions, are binding on the concerned parties addressed by them, provided they are made aware of them through legally established means of communication and whenever required to implement them. Such administrative decisions possess a binding legal nature and the presumption of legality and propriety, as individuals addressed by these decisions cannot refuse to comply with them.

Administrative sanctions are governed by a set of procedural rules that differ from those known in criminal procedures. These rules have distinctive features, whether concerning the conduct of administrative proceedings or at various stages such as investigation and appeal. The method of enforcement also differs from that of criminal penalties.

There are no uniform procedures in the field of administrative sanctions; however, a number of main principles and rules can be derived from legal sources such as legislative and regulatory texts or the general principles of law established by administrative and constitutional judiciary. The procedures concerning administrative sanctions have their own characteristics, as their enforcement, being unilateral administrative decisions, is prioritized and has an executive nature, meaning they must be implemented by those addressed by them without the need for the administrative authority to resort to the judiciary. The sanction must be enforced as soon as it is pronounced. The phenomenon of administrative sanctions has become an urgent necessity dictated by the public interest, especially with the expansion of the state's role and the need to achieve economic security. In this regard, the following question arises: What are the

general legal rules governing the administrative sanctions imposed by public administration?

To answer this question, we will present the phenomenon of general administrative sanctions by collecting and organizing information and data related to the subject in a systematic scientific manner to reach a specific purpose, which is the legal status of the administrative penalty issued by the public administration. We have chosen to divide this study into two sections: the first section addresses the conceptual framework of the administrative penalty, and the second section discusses the authority competent to determine and impose administrative sanctions.

First Requirement: The Foundations of Administrative Sanctions

This chapter provides a comprehensive exploration of the foundational aspects of administrative sanctions. In Section One, the discussion focuses on the conceptual framework of administrative sanctions, including their definition, characteristics, and underlying principles. This section sets the stage by examining how administrative bodies utilize their powers to maintain public order and enforce compliance.

Section Two delves into the independent nature of administrative sanctions, highlighting their distinction from other forms of penalties, such as disciplinary or contractual sanctions. By examining their unique attributes and the principles governing their application, this section underscores the balance between safeguarding public interest and ensuring individual rights. Together, these sections establish a cohesive understanding of the legal and practical dimensions of administrative sanctions.

First Branch: The Conceptual Framework of Administrative Sanctions

These administrative bodies exercise their powers and duties in organizing public life and maintaining public order¹ through the use of regulatory or normative decisions, which include general and abstract rules imposing restrictions on the exercise of activities, they also employ individual decisions that implement laws and regulations, such as decisions involving the granting of approvals and licenses, additionally, they exercise the privilege of

issuing individual decisions that impose administrative sanctions on non-compliant parties, the process of making administrative decisions is a scientific, technical, and practical necessity that effectively implements the state's general policies and strategies and achieves its designated objectives in an objective, scientific, and rational manner, administrative decisions play a crucial and effective role in conducting all administrative operations that organize public life².

To enforce its decisions, the administration resorts to imposing penalties or what is known as administrative sanctions on individuals when they refuse or fail to voluntarily comply with those decisions, the basis of these administrative sanctions lies in the concept of fault, represented by the refusal or failure to voluntarily implement the administrative decision³, it is incumbent upon everyone, including the legislative⁴ and executive authorities, to adhere to the provisions of the constitution.

Administrative sanctions differ from disciplinary, contractual, and even criminal sanctions in their unique characteristics, general administrative sanctions are issued through individual administrative decisions "that possess the necessary elements for their formation and existence",⁵ by the administration as a public authority when exercising its administrative activity in specific circumstances, administrative sanctions are a privilege of the administration, based on the legality and legitimacy of administrative decisions, the principle of legality generally means that the state is subject to the law in all its activities and actions, consequently, all public authorities in the state (legislative, executive, and judicial) ⁶must comply with the law and submit to its provisions, this connects the principle of legality with the concept of the rule of law, which represents fundamental guarantees for the protection of individuals' rights and freedoms, it is the legal basis for oversight over the actions of the administration, ensuring that the law prevails over the will of all members of society and public authorities.

Thus, when the executive authority exercises its administrative function, implementing laws, managing public services, maintaining security and order, and ensuring individual rights, this activity aims to achieve public benefit, to

accomplish this goal, it is logical to acknowledge that the administration enjoys a set of privileges that empower it against individuals and tilt the balance in its favour, these privileges, characterized by the nature of public authority, enable it to issue unilateral decisions imposing administrative sanctions on non-compliant individuals, the administrative authorities possess broad powers when exercising their authority to impose sanctions as a privilege of public authority, allowing them to adapt this coercive power⁷, they are obligated to ensure compliance with the standards and conditions imposed by laws, the legislature has recognized the necessity of granting the administration the right to impose administrative sanctions⁸ to curb the dominance of capital over public interest, which requires balancing the public and private interests, prioritizing the public interest when necessary.

Therefore, to study these administrative sanctions, it is essential to clarify their concept and unique characteristics, which will be addressed according to the subsequent division.

First: The Concept of Administrative Sanctions

The administration possesses an authority granted to it by the legislature, which allows it to impose administrative sanctions on individuals, whether users or beneficiaries of public services, outside the realms of contracts and disciplinary action, this does not infringe upon the jurisdiction of the judiciary, even though these administrative sanctions constitute a significant privilege for the administration and an exceptional, unconventional measure, considering that imposing sanctions is typically a power vested in the judiciary⁹, this is especially relevant as it affects the rights and freedoms of individuals, which most charters and constitutions protect by establishing a fundamental principle: separating sovereignty and public authority from the desires and whims of rulers and restricting them in their exercise of sovereign and public authority.

The nature of sanctions is also distinguished by their function of penalizing failure to meet obligations, aiming at prevention or correction, this necessitates that legal texts involving administrative sanctions be subject to a strict interpretation, avoiding ambiguity, expanding interpretation could enable the administrative body to impose sanctions not prescribed by the legislature,

unlike other sanctions imposed by non-administrative entities, where broader interpretation may be employed to mitigate legislative gaps¹⁰.

Most comparative legal systems have eventually acknowledged the administration's authority to impose administrative sanctions on individuals after extensive debate and repeated rejection of granting this power. Ultimately, it was recognized and admitted as a right of the administration but conferred upon these administrative sanctions an independent nature; this section will cover the definition and independent characteristics of general administrative sanctions.

Second: Definition of Administrative Sanctions

A sanction is the pain or penalty prescribed by law and enforced by the public authority due to an offense or violation, obliging the offender to bear it for the public interest¹¹. A penalty can be defined as a sanction determined by the legislature and imposed by a judge on an individual found responsible for committing a crime. Generally, a penalty involves inflicting pain on the offender by diminishing some of their personal rights, primarily the right to life and freedom.

Professor Amin Mostafa Mohamed defines an administrative sanction as "a punitive measure imposed by independent or non-independent administrative authorities while exercising their public authority over individuals, irrespective of their functional identity, as an original method to deter breaches of laws and regulations..",¹² professor G. Braiba defines an administrative sanction as a penalty aimed at achieving public interest, health, or public safety, designed to end or prevent disturbance or danger from occurring or recurring,¹³ professor Ghanam Mohamed Ghanam describes an administrative sanction as "a punitive action taken by the administration pursuant to a legal or regulatory provision without judicial intervention, issued as an individual administrative decision to penalize the violator of a legal obligation."¹⁴

It is known that the administration has the right to impose administrative sanctions through an individual administrative decision. This sanction does not constitute an infringement or violation of the judiciary's jurisdiction, as the judiciary retains the right to determine the legality of these general

administrative sanctions; The state, by establishing public services and expanding its role to meet public needs¹⁵, necessitates the imposition of administrative sanctions in specific cases, evident in certain violations, provided that individuals are afforded the minimum legal guarantees set by the legislature¹⁶, imposing general administrative sanctions is the result of violations prohibited by laws and regulations, giving these sanctions their deterrent nature.

Third: Legitimacy and the Principle of Legality in General Administrative Sanctions

General administrative sanctions are imposed on violators through administrative decisions; therefore, for such sanctions to be valid, the administrative decision must be legitimate and fulfill its legal conditions. The legitimacy and soundness of administrative decisions refer to their compliance with the principle of legality, which prevails in modern states; this means that the soundness of administrative decisions is linked to the principle of the administration's subjection to the law, a legal necessity for upholding the principle of legality in the state. The general meaning of the principle of legality implies that all, rulers and ruled alike, are subject to the rule of law, and all state authorities must adhere to and comply with the law in all their actions and conduct¹⁷, this embodies the principle of administrative legality, which Professor Mohamed Al-Saghir Baali defined as "the subjection of actions and conduct issued by the executive and public administration to the prevailing legal system in the state in all its forms".¹⁸

Contemporary legal scholars have paid significant attention to defining the nature of the administration's obligation to respect the law. Some argue that the administration's adherence to the law is a negative obligation, requiring it to abstain from violating legal provisions. This view implies broad discretionary power for the administrative authority, presuming the legality of its actions unless proven otherwise, others oppose this view, claiming that the administration's obligation to respect the law is a positive one, necessitating that all administrative actions (legal and material) be based on a legal rule authorizing them, this perspective limits the scope of administrative discretion, assuming that administrative actions are generally unlawful unless permitted by law,

another view holds that administrative actions are illegitimate unless executed pursuant to existing legislative rules, which would prevent the administration from carrying out actions not based on legislative provisions.

In summary, all administrative decisions involving the imposition of general administrative sanctions must adhere to the principle of legality, which is based on the essential and fundamental rule of the administration's impartiality and public authority, separating them from the rulers' desires and subjecting their exercise of authority to legal rules.

Dr. Abdelaziz Khalifa defined administrative sanctions as "individual administrative decisions of a punitive nature, imposed as a consequence of violating legal obligations or administrative decisions imposed by the administration as a public authority, in the course of carrying out its activities in accordance with the prescribed legal form and procedures, aimed at regulating individual activities to achieve the public interest".¹⁹

The focus, whether in jurisprudence or case law, revolves around what is called general administrative sanctions. Despite this, there is no specific term exclusively designated for these sanctions, and even financial fines are not considered an exclusive sanction of the administration, as they can also be imposed by an ordinary judge.

Second Branch: The Independent Nature of Administrative Sanctions

The primary aim of imposing administrative sanctions is to achieve harmony between individual activity and public interest without unduly infringing on individual rights, with public interest taking precedence if necessary, this is what grants administrative sanctions their independent nature, distinguishing them from other legal systems, such as administrative control measures, these measures are a set of procedures taken by the competent authority that result in the restriction of individual freedom, these restrictions vary in scope and may apply to a specific place, certain individuals, or a particular subject²⁰, they also differ from direct enforcement, which refers to the exceptional power held by the administration to enforce its decisions by force when individuals refuse voluntary compliance without resorting to the judiciary, this power is based on the presumption that all administrative decisions are

correct and lawful until proven otherwise, due to the presumption of legality, which exempts the administration from proving the validity of its decisions, therefore, no one can refuse to comply with them based on their legal compliance.

In this context, Professor Philippe Marini believes that administrative bodies cannot achieve the desired effectiveness unless they are granted the authority to impose sanctions,²¹ General administrative sanctions also differ from other types of sanctions found in criminal law, such as disciplinary, contractual, or criminal sanctions, as will be discussed in the following two points:

General administrative sanctions have a deterrent effect as a consequence of the actual violation in order to punish the offender and prevent others from committing similar acts²², aiming to protect public order in its various aspects, such as public safety, public health, and public tranquillity²³, on the other hand, administrative control measures lack a punitive nature, as they are preventative measures intended to prevent a violation that is about to occur, based on visible external signs, therefore, the distinction between general administrative sanctions and administrative control measures lies in the goal of each, administrative control refers to the authority granted by law to the administration to restrict the activities and freedoms of individuals in a specific area, which may pertain to a specific location or activity, for example, the public authority may impose measures on the movement of individuals, such as requiring permits to move in certain areas or prohibiting movement at specific times, accordingly, revoking a permit is considered an administrative control measure if it is aimed at preserving public safety²⁴, however, it becomes an administrative sanction if the administration takes such action following the commission of a crime.

Since administrative control measures lack a punitive nature, their legitimacy does not require the same procedural safeguards as administrative sanctions,²⁵ the administration has discretion in taking these measures, and its authority is limited only by abuse of power, an administrative decision imposing general administrative sanctions may be considered to be tainted with an abuse of power if it is issued for a purpose other than that for which the administration

was granted the authority to issue it, such as granting police authority for the sake of preserving public order, abuse of power can also occur if the administration exercises its authority for a purpose other than the public interest.

One of the main requirements for imposing general administrative sanctions is justification,²⁶ this is a necessary condition for their validity, as it provides the reasons for issuing the decision and informs the affected party of the motivations behind their punishment, this is not the case for administrative control measures, which may be issued without justification. However, given that administrative control measures are preventive in nature and are intended to avert potential risks to individuals, even if they do not have an immediate punitive nature, they indirectly carry such consequences. For example, closing a business, revoking a permit, or cancelling it has a significant impact on the person subject to the decision,²⁷ therefore, administrative control measures must be justified so that the affected individual is informed and can decide whether to accept or contest the decision through legal means, the legislator correctly required the administration to justify decisions that impose restrictions on individual rights.

Reasoning an administrative decision involving administrative sanctions involves the administration stating the reasons for issuing the decision to inform the affected party of the motivations behind their punishment,²⁸ there is a significant difference between justifying administrative sanctions and their grounds. The reason for imposing a sanction refers to the legal or factual situation that led the administration to impose it, while the justification of the sanction pertains to the rationale behind its imposition,²⁹ it is well known that individuals enjoy the general freedoms guaranteed by the constitution; However, in certain situations, restrictions are placed on these freedoms for the sake of public interest. The principle is the enjoyment of freedom, and the exception is the restriction. Therefore, both the authority to impose general administrative sanctions and the power of administrative control must adhere to rules that prevent or limit any abuse in their exercise by the administration; The most important of these rules is the principle of legality, meaning that any action taken by the administration must be lawful, consequently, any action that affects

individuals' freedoms and rights must be justified, or else the administration would be exceeding its authority

First: Distinction between Administrative Penalties and Disciplinary Penalties

The Egyptian High Administrative Court defined disciplinary offenses in several rulings, one of the most important being,³⁰ the cause of the disciplinary decision within the public service is the employee's failure to fulfill the duties of their position or deviation from its requirements", based on the principles of the legality of disciplinary penalties, recognized in most legislations worldwide, the legislator is the one who defines the disciplinary penalties that must be imposed on the guilty employee. If some authorities are allowed to issue regulations or penalties, they are bound by the penalties set in these regulations, limiting their power to determine the disciplinary offenses for which an employee should be punished if committed, the selection of the appropriate penalty must be made from those defined either in the public service law or in laws for other sectors, and no new penalties can be invented, even by analogy.

By referring to some penalty lists in comparative Arab or French legislation, we can observe differences in the phrasing of these texts. Some list them directly, such as Moroccan law, while others divide them into light and severe penalties, such as Syrian and Iraqi laws, and the French legislator categorizes them in groups, all these divisions follow a single standard: a gradation between mild and severe penalties, despite the varying terminology;

Disciplinary penalties are issued through a disciplinary decision by the competent authority, which includes the imposition of a specific penalty based on legal texts for an employee who is proven to have committed an offense; Therefore, the imposition of disciplinary penalties requires a functional relationship between the violator and the state, granting the administration the right to punish them when they deviate from their duties. In contrast, the imposition of general administrative penalties is a right owned by the administration to be used against anyone who violates a legal provision or administrative decision, regardless of any prior relationship with the administration, thus³¹, we can say that general administrative penalties are

characterized by their general nature, as they are not limited to a specific group that is bound by a special relationship with the administration.

Second: Administrative Penalties and Contractual Penalties

Administrative contracts, as a method for the exercise of administrative authority in regulatory activity³², are sometimes resorted to by the administration to achieve specific goals and organize certain areas, scientific reality has shown that these authorities often resort to contracts to achieve public interest goals, such as acquiring tools and devices to perform certain tasks, obtaining services, or organizing and managing public facilities. Additionally, the use of contracts is justified in any system that remains connected to private law principles and the freedom of economic activity, as it allows private individuals to participate in the management of public facilities; However, in the case of violating the terms of the contract, the administration resorts to imposing contractual penalties on those involved.

These contractual penalties are only imposed on those who have a contractual relationship with the administration, which entitles the administration to penalize the contractor when they breach the contractual obligations stipulated in the administrative contract, the effects of an administrative contract concluded between the administration and one of the parties are aligned with civil law provisions, as the administrative contract does not contradict the essence of those provisions. Rather, it extends them to include organizational conditions, such as those found in public facility concession contracts; Moreover, regarding the objectives achieved, the administration always aims to meet public needs for the benefit of individuals. In contrast, general administrative penalties are the right of the administration to be imposed on anyone who violates a legal provision or administrative decision,³³ even if they are not connected to the administration by contract or employment.

Second Requirement: The Authority Competent to Determine and Impose Administrative Penalties

Given the generality and abstraction inherent in the law, as well as the provisions set forth by its texts through the approval of representatives of the people on the restrictions contained within it, those restrictions reflect the will

of the people and respond to the desires of the majority,³⁴ the fundamental and vital elements for the rule of law state include the existence of a complete, comprehensive, and effective legal system that prevails in the country, as well as the principle of the subordination of all institutions, authorities, bodies, and public facilities to the provisions of the prevailing legal system in everything they do within the framework of the principle of the division of labor, specialization, and jurisdiction, additionally, there must be a strong and well-structured penal legal system to ensure the realization and application of the rule of law and to protect the rights and freedoms of citizens and the vital public interests of both society and the state.

To achieve this, the state must, under good governance, have a clear and defined public administrative policy that is adaptable, enrichable, and suitable for development. Therefore, the legislator is the one who generally defines the general administrative penalties, but as an exception, the administration shares this authority with the legislator for purely practical reasons, it is generally accepted that the legislator defines administrative penalties, and some legal scholars argue that this penalty entails a severe procedure that affects the freedoms and rights of individuals to such an extent that it has a more significant impact on them.³⁵

As previously mentioned, general administrative penalties are individual administrative decisions imposed by the administration as a public authority when carrying out its activities in the form and procedures prescribed by law; the goal is to regulate individual activities in a way that serves the public interest. Therefore, administrative penalties are sanctions that affect individuals' rights and freedoms when they violate laws and regulations. It is worth noting that the administrative judiciary in the Arab Republic of Egypt has ruled in many of its decisions,³⁶ that the practice followed by the administration acquires the force of legislative regulations and acknowledges the binding legal power of administrative customs, considering it a source of legitimacy, the judiciary has also decided that a legal violation is not confined to a breach of a provision in a law or regulation, but extends to the violation of any established practice that the administration has adhered to and adopted as its methodology.³⁷

First Branch: The Authority Competent to Determine Administrative Penalties

The competent authority to determine administrative penalties is generally the legislator. However, as an exception, the administration may share in this fundamental authority, due to several practical considerations. The administration is responsible for examining the legal structure of administrative systems, how rules and procedures are applied, the rights and obligations arising from them, and the validity of decisions and contracts. It also deals with the penalties imposed on individuals' freedoms and various responsibilities. All of these factors grant the administration the right to participate with the legislator in determining general administrative penalties. This requires granting the authorities tasked with this function a deterrent power, enabling them to punish violators when they fail to fulfill their legal obligations.³⁸

As is well known, the right to impose penalties belongs solely to the state, and thus the imposition of these general administrative penalties falls under the jurisdiction of an administrative authority within the state. In this section, we will refer to the authorities competent to determine these penalties in the first part, and in the second part, we will address the authorities responsible for imposing them.

First: The Legislator's Competence to Determine Administrative Penalties

Administrative penalties involve severe sanctions on individuals, impacting various aspects of their lives, the severity of these general administrative penalties is what gives the legislator the authority to determine them, furthermore, the legislator does not issue laws based on personal whims; it is expected that no self-interest conflicting with the public interest drives them, as that would constitute legislative deviation,³⁹ there is no concern that the legislator's authority to establish administrative penalties will excessively infringe upon individuals' rights and freedoms. The law is passed through several stages, ensuring transparency and public participation, allowing all political views to influence the legislative process, this process prevents laws from unduly restricting public freedoms or violating rights⁴⁰, additionally, constitutional review ensures the law respects fundamental rights and freedoms.

Various types and means of oversight exist over public activities in the state, including official political oversight and judicial oversight. In this regard, we recall the famous statement by jurist Al-Sanhouri: "Anyone who is wronged and whose adversary is as powerful as the administration must have a refuge to turn to and present their complaint; There is nothing more honorable for the administration and more protective of its status than for it to submit to the judiciary and either offer justice or have justice offered to it", this is closer to truth and justice and preserves the dignity and respect of the administration. Since the execution of judgments against the administration is considered the only means of preserving the principle of legality and the rule of law in the relationship between the individual and the state, the non-execution of a single judgment is enough to indicate a wrongful phenomenon that must be dealt with in a way that protects the foundations of a democratic state, a court ruling that does not reach execution has no value. If the administrative authority wishes to avoid complying with a judicial ruling, it may resort to direct methods of denial, sometimes explicitly and at other times through deception, the result remains the same for the litigant—his rights are violated,⁴¹ oversight also extends to popular official monitoring, a national oversight system must involve the cooperation and integration of various types of oversight over public activity in the state to achieve its vital objectives, it must meet the criteria of fairness, humanity, objectivity, neutrality, integrity, specialization, realism, flexibility, and the use of accurate information systems, it should also have a forward-looking perspective, supported by political and constitutional safeguards to protect the entities, individuals, and operations involved in the oversight system.⁴²

The oversight exercised by the public, across its various sectors, on the state's administrative apparatus ensures the orderly and consistent functioning of public utilities, on one hand, it assures the public that these facilities are operating smoothly, while on the other, it exposes any administrative errors or violations within public bodies and administrations, enabling corrective actions, this form of oversight ensures the legislator's strong focus on determining general administrative penalties to safeguard all citizens' rights.⁴³

The legislator's authority to define general administrative penalties places several obligations on the administration, as it is the body tasked with implementing these penalties, these obligations include the administration's duty to adhere to the provisions outlined for violations, both in terms of their type and extent, it is prohibited for the administration to substitute one penalty for another based on the claim that it is more effective in achieving the intended outcome, such actions would constitute an infringement on the legislator's jurisdiction, essentially usurping the legislative authority, which would render any penalty decision invalid due to its substantial lack of jurisdiction,⁴⁴ this is because the administration does not have the right to revise or monitor the appropriateness of the legislator's laws; its jurisdiction is limited to the implementation of these laws, in this regard, the Egyptian Supreme Administrative Court annulled an administrative decision to demolish buildings erected on agricultural land, noting that the administration lacked the authority to do so, as the legislator had delegated this power solely to the judiciary, the administration could only halt the violation administratively at the violator's expense, in accordance with Law No. 116 of 1983,⁴⁵ while demolition may be more effective in achieving the goal of preventing construction on agricultural land, the administration, by carrying out this action, would be violating the judicial authority, which contradicts the principle of separation of powers.

The provisions involving administrative penalties are subject to the principle of strict interpretation when the texts are ambiguous. However, some legal scholars argue that the strict interpretation of texts involving administrative penalties is not always applicable, they assert that a broader interpretation of the legislator's intent is permissible to alleviate the rigidity of the principle of legality and to address gaps in legislative provisions concerning administrative penalties,⁴⁶ expanding the interpretation provides the administration an opportunity to impose penalties not expressly defined by the legislator, this could infringe upon individuals' rights and freedoms, in contrast to penalties imposed by non-administrative authorities, where broader interpretations may be allowed to address gaps in the law.⁴⁷

Second: The Administration's Competence to Define Administrative Penalties

As previously stated, the legislator is generally the authority responsible for determining general administrative penalties, however, as an exception, the administration may play a role in this determination, as administrative incidents evolve more quickly than legislation can keep up with, the flexibility of administrative activity, its capacity for development, and the unpredictability of the various aspects of administrative functions and the legal issues surrounding them create obstacles to the legislator's ability to cover all administrative activities comprehensively. Unlike other fields, such as civil, commercial, or maritime law,⁴⁸ which are relatively stable due to the predictability of relationships and issues they generate, administrative law is complex and difficult to codify comprehensively; Dr. Suleiman Muhammad Al-Tamawy aptly remarked, "If administrative law were to be codified, it would be one of the most frequently altered and revised laws."⁴⁹

Furthermore, the administration has more practical experience with the fields and activities that individuals engage in, providing it with deeper knowledge and understanding. This expertise allows the administration to better assess deviations and determine effective penalties to deter violations. However, this does not exempt the administration from adhering to legal safeguards, its authority to determine penalties remains limited, not encroaching upon the legislator's competence except to the extent that the exception allows.

Second Branch: The legal basis for the administration's authority to impose penalties

The administration may determine general administrative penalties as an exception to the general rule. The legitimacy of this exception in France is reflected in Article 34 of the 1958 Constitution,⁵⁰ which assigns a role to regulations in criminalization and punishment alongside the legislator's role in this regard. However, the executive authority's jurisdiction in this matter is confined to determining the types of offenses and penalties,⁵¹ some scholars argue that most administrative violations are similar to violations in the administrative division of crimes, which justifies the administration's role in

determining the penalties for such violations,⁵² according to the French Council of State, it is necessary that the task of enforcing the law through administrative penalties not be left to the discretion of independent administrative authorities, so as to avoid violating public rights and freedoms, especially considering that these authorities interfere with the functions of other state bodies, this interference occurs regardless of the existence of a constitutional provision.⁵³

In Egypt, the legitimacy of this exception is also demonstrated in the legislative delegation stipulated in Article 66 of the 1971 Constitution, which asserts that no crime or penalty may be imposed except by law,⁵⁴ the legislator, in accordance with what he deems appropriate, may either regulate this matter himself or delegate it to another body, specifying by law the scope, conditions, and limits of its authority, to prevent the delegation of authority from turning into a waiver of legislative powers in favor of the executive authority, the delegation must remain within defined limits, the delegated authority cannot further transfer this power to another entity, judicial protection ensures the respect of rights.⁵⁵

First: Exclusion of Freedom-Depriving Penalties from Administrative Penalties:

Since the administration's competence to impose administrative penalties is an exception to the general rule, and since the legislator retains the right to determine such penalties, he exclusively holds the power to establish penalties that deprive individuals of their liberty, this was reflected in the ruling of the Egyptian Constitutional Court, which declared the unconstitutionality of Article 1 of Law No. 84 of 1970 regarding the monitoring of certain suspects by the police, concluding that such a liberty-depriving measure can only be imposed by a judicial ruling.⁵⁶

Some scholars argue that excluding liberty-depriving penalties from administrative penalties marks a clear distinction between judicial and administrative authority in imposing these penalties, the reason for excluding administrative authorities from imposing liberty-depriving penalties is the nature of these violations, which are often economic or social in nature and do not warrant such penalties, additionally, the administration is prohibited from

infringing upon constitutional rights or placing restrictions that stop or hinder their exercise through administrative decisions involving penalties. In this regard, the French Constitution designates the judiciary as the guardian of rights and freedoms, but the judiciary's intervention is required particularly when it involves the deprivation or restriction of freedom, thus excluding such actions from the scope of administrative penalties, the French Constitutional Council has also excluded the role of administrative bodies in imposing penalties only on individuals with a specific relationship to them, emphasizing that what matters is not the authority imposing the penalty, but the respect for constitutional guarantees.⁵⁷

Second: The Competent Authority for Imposing Administrative Penalties

The French Constitutional Council has established the concept of administrative penalties issued by the administration in a broad manner and has also laid down a number of principles aimed at regulating them.⁵⁸ Administrative authorities can exercise the power to impose penalties as long as they are entirely unrelated to any form of deprivation of liberty, on the other hand, the exercise of this penalty power must be in accordance with legal measures designed to protect constitutional rights and freedoms. The right to punish, in turn, belongs solely to the state and is exclusively related to the administrative authority of the state, these administrative authorities, which have the right to impose general administrative penalties, include "ministers, governors, various administrative bodies, and independent administrative authorities" therefore, general administrative penalties are primarily identified by the entity imposing them, they are issued by an administrative authority, and secondly, in terms of the nature or distinctive character of this authority, it is an administrative one.

First: Administrative Penalties Issued by Administrative Bodies

In principle, administrative penalties are issued by an administrative authority, these administrative authorities, which have the right to impose general administrative penalties, include ministers, governors, regional officials, and independent administrative authorities, the latter does not have a legal personality distinct from that of the state, in France, which is the primary origin of such independent administrative authorities, the Council of State has

acknowledged that a geographically competent authority can issue a fine for the purpose of ensuring the collection of local taxes; However, it is noteworthy that the French Constitutional Council initially permitted, through the ruling on the Stock Exchange Trading Committee, the exercise of the right to punish by an administrative authority acting within the framework of public authority privileges,⁵⁹ this constitutionality was reaffirmed in the decision issued on July 28, 1989, where the French Constitutional Council confirmed the general authority of the administration, and specifically independent administrative authorities, to impose administrative penalties. This decision pertained to the powers granted to the Securities and Exchange Commission, where the Council emphasized that the principle of the separation of powers does not prevent an administrative authority from acting within the scope of public authority privileges.⁶⁰

Thus, the French Constitutional Council has established the imposition of penalties with a punitive nature, without consideration for the individual's rights in this regard, the situation requires a balance between conflicting interests when determining penalties, which the legislator, as a neutral party, is better equipped to achieve.⁶¹

Thus, penalties that deprive individuals of rights fall outside the scope of administrative penalties, as the administration's authority to impose administrative penalties is an exception to the general rule, with the legislator retaining the exclusive right to determine penalties that deprive individuals of their freedom. Some scholars argue that excluding liberty-depriving penalties from the framework of administrative penalties marks a clear distinction between judicial and administrative jurisdiction in imposing such penalties.⁶² Regardless of which authority is responsible for determining general administrative penalties, whether administrative or legislative, its discretionary power in this regard is subject to constraints and regulations outlined in the constitution. An example of this is disciplinary proceedings related to trade unions, not all penalties issued by these bodies are considered administrative penalties, but only those related to public authority privileges.

Second: Administrative Penalties Issued by an Independent Authority

General administrative penalties are characterized by their distinct organizational nature, as they share with the judiciary its original jurisdiction, which is the imposition of penalties. Judicial independence forms the essential safeguard against abuse of power, however, it is noteworthy that when the French Constitutional Council recognized the constitutionality of administrative penalties, it raised the question: Does this mean that it has abandoned the independent nature that distinguishes judicial authority?

The answer to this question is not entirely certain because the French Constitutional Council did not explicitly express its view on this point. However, it is known that the Council has often relied on judicial independence to the extent that this principle has become a constitutional norm, additionally; the decisions in which the French Constitutional Council affirmed the constitutionality of general administrative penalties were related to independent administrative authorities, such as those concerning the Higher Council of Radio and Television.

In general, it can be said that the administration enjoys a significant degree of freedom, rather than true independence; therefore, it is believed that legal doctrine has abandoned the guarantees of what is known as the "independence of the administration" in imposing administrative penalties, these guarantees are linked to functional guarantees aimed at avoiding unjust penalties.

Conclusion

In the context of the administrative penalties system, the legal framework governing their imposition is crucial for balancing the authority of the administration with the protection of individual rights and freedoms. The evolution of the administrative penalty system, particularly in French and Algerian jurisprudence, illustrates a delicate interplay between the administration's powers and the safeguarding of constitutional principles;

The French Constitutional Council, through its rulings, has significantly shaped the understanding of administrative penalties, especially regarding their imposition by administrative bodies, while administrative authorities are granted certain powers to impose penalties; their jurisdiction is framed by constitutional limitations that seek to protect individual liberties. In parallel, the distinction

between administrative penalties and judicial penalties has emerged as an important area of focus, with particular attention given to the principle of judicial independence, the recognition of administrative penalties as privileges of public authority raises questions about the scope and limits of administrative powers in this domain, the separation of powers principle, which aims to prevent any single authority from exercising undue power, plays a central role in regulating the relationship between administrative and judicial authorities.

The key findings of this study include the following:

1. The role of the administration in imposing penalties: The study reveals that while administrative bodies are granted significant authority to impose administrative penalties, they are constrained by constitutional safeguards that protect individual rights and freedoms. These safeguards are intended to prevent abuse of power and ensure that penalties are imposed fairly and justly.
2. The distinction between administrative and judicial penalties: It is clear that administrative penalties, particularly those involving the deprivation of liberty, fall outside the scope of administrative jurisdiction and remain within the purview of judicial authorities. This distinction underscores the importance of judicial oversight in matters related to personal freedoms.
3. The constitutional framework: Both French and Algerian legal systems emphasize the constitutional necessity for judicial control over certain forms of administrative penalties, particularly those that infringe on individual freedoms. The role of the judiciary in overseeing administrative actions ensures that public authorities do not overstep their bounds.

Recommendations:

1. Clarification of the role of independent administrative authorities: Given the growing role of independent administrative authorities in imposing penalties, it is essential to further clarify their powers and limits within the constitutional framework. This will help prevent any potential conflict with the principles of judicial independence and constitutional guarantees.
2. Strengthening judicial oversight: It is recommended that further mechanisms be developed to ensure that the judicial system retains effective oversight over administrative penalties, particularly those that could impact individual rights.

This would help maintain the balance between the administration's role and the protection of constitutional rights.

3. Legal reforms for greater transparency: Legal reforms should be considered to ensure greater transparency in the administration's decision-making process when imposing penalties. This would allow for more accountability and help protect individuals from arbitrary or unjust penalties.

4. Balancing administrative discretion with individual rights: While it is important to grant the administration the necessary tools to enforce laws effectively, it is equally important to ensure that these powers are exercised with respect for individual rights. Clear limits and oversight mechanisms should be in place to prevent any abuse of power.

In conclusion, the imposition of administrative penalties is a complex area of law that requires careful attention to constitutional principles, judicial independence, and the protection of individual freedoms, by strengthening the safeguards surrounding administrative powers and ensuring robust judicial oversight, the legal system can maintain a fair and balanced approach to administering justice.

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