

Received: May 2023 Accepted: June 2023

DOI: <https://doi.org/10.58262/ks.v11i02.023>

Judicial Review of Administrative Licensing Decisions (Comparative Study)

Husam Mohammed Madfoon Al-Jubori¹, Saeed Ali Ghafil Al-Shibly²

Abstract

Administrative licensing is an administrative preventive decision taken by the authority of administration as a means to preserve public order. It is considered an exceptional measure that imposes restrictions on public freedoms, which are generally considered fundamental and protected by constitutions. Consequently, this limitation is manifested in the form of refusing to grant or terminating licenses, either by cancellation or withdrawal by the administration. This poses a risk to freedoms and could result in their prohibition, which requires the administration to have a legal basis when denying or terminating licenses. Given that the concept of public order varies from one country to another and over time within the same country, making it difficult to define precisely based on the law or predict the changes it may undergo through legislation, the administration enjoys significant authority in this regard without necessarily relying on a legal basis. This is based on the constitutional principle of the administration's authority to issue regulatory rules, even if not explicitly stated in the country's constitution. Therefore, the administration must strike a balance between enforcing public order by refusing to grant administrative licenses and terminating them, and ensuring the protection of individual freedoms. This balance can only be achieved through broad judicial oversight over all aspects of the decision to deny or terminate licenses, ensuring the realization of this equilibrium between the exercise of the administration's authority in preserving public order and safeguarding individual freedoms

Keywords: *Administrative Licensing, Judicial Review, Legitimacy Control, Administrative Decision.*

Introduction

Administrative licensing is one of the administrative control mechanisms employed by the administration to maintain public order, encompassing both traditional and modern elements. Consequently, its purpose is to protect and prevent any disruption to public order (Litchfield & Frederick, 2023). The concept of public order is closely linked to the state's supreme interest, and safeguarding public order, being a flexible and non-specific concept, varies in interpretation from one state to another and over time within the same state. Therefore, the administration must adapt to its variations while ensuring its realization, taking into account the rights and constitutionally guaranteed freedoms of individuals. (Sriyakul & Chankoson, 2022)

Balancing public freedoms on one hand and the imperative of preserving public order on the other is essential for the administration. The administration's actions should be grounded in a

¹ College of Law, University of Kufa
Email: husamibory439@gmail.com

² College of Law, University of Kufa
Email: saeed.alshebly@uokufa.edu.iq

legal provision, whether primary or secondary legislation. In the realm of administrative control, the administration enjoys broad discretionary power derived from the constitution, even in cases not explicitly regulated by law. This has led some legal and constitutional experts to assert that public freedoms in positive law are, in reality, subject to the administration's discretion (Schneider, 2022).

The authority of the administration to preserve public order materializes in two forms: refusing to grant a license or terminating it after issuance, either through withdrawal or cancellation by the administration, whenever its continuous granting would jeopardize public order. Given this extensive authority, there must be another authority that exercises oversight over the administration's decisions, and that is the administrative judiciary's supervision (Kurji et al., 2023). Although licensing is a specialized administrative decision that sets it apart from others, it remains subject to the same criteria as other decisions. It is based on five elements: jurisdiction, form, reason, place, and purpose, all of which are subject to scrutiny for legitimacy by the administrative judiciary (Alabbadi et al., 2022).

The importance of this matter lies in the role played by the judiciary in safeguarding the rights and freedoms of individuals from arbitrary administrative actions, especially since licensing serves as a restriction on constitutionally guaranteed freedoms. Therefore, the judiciary serves as a real safeguard to which individuals resort to confront the administration's arbitrariness and challenge its decisions, as the judiciary is independent and not subject to any authority other than the law (Balgan & Otgonbayar, 2023).

The problem of the research lies in the extensive authority wielded by the administration to preserve public order, given the variable concept of public order that differs from one country to another and changes over time within the same country. Defining public order by law is challenging, leaving its determination to the discretion of the administration. There is a concern that the administration may abuse this power under the pretext of preserving public order, particularly through the refusal to grant or terminate licenses, resulting in a restriction of freedom. Therefore, such refusals must be based on logical and reasonable grounds, as otherwise, individuals' freedoms would be significantly violated (Van Hoa et al., 2022).

The role of the administrative judge comes into play to counter decisions made by the administration that violate the principles of external and internal legitimacy. As a result, the research will delve into how judicial oversight is exercised over the external legitimacy of the decision to refuse to grant or terminate licenses and then how it is applied to its internal legitimacy (Wiroonratch & Maiprom, 2023). The study aims to answer these questions and achieve a balance in the administration's authority to preserve public order on one hand and safeguard public freedoms on the other through judicial review (Bhatti & Alnehabi, 2023).

The research will be conducted using a comparative analytical approach, examining France, Egypt, and Iraq whenever necessary, elucidating the juristic opinions and judicial rulings related to the topic and weighing between them accordingly (Ngo, 2023).

Research Methods

In this study, we will illustrate the administrative judiciary's oversight over decisions to refuse the granting of administrative licenses and their termination through its examination of external legitimacy, followed by its scrutiny of internal legitimacy. The process will be as follows:

First: Oversight of External Legitimacy

The oversight of external legitimacy pertains to the administrative judge's scrutiny of two aspects: competence and form in decisions related to the refusal to grant a license, its withdrawal, or its cancellation after issuance, all for reasons related to preserving public order. We will elaborate on these aspects in detail through two sub-sections as follows:

1- Oversight of Competence

The oversight of competence constitutes the first element subject to the scrutiny of the administrative judge when exercising judicial review over the legitimacy of administrative licensing decisions. Competence here refers to the legal authority granted to a public body or an official to carry out certain legal actions. The general rule is that the legislator defines the competence of each public administrative entity [1], including regulations issued by the executive authority concerning licensing. Such regulations must be issued by competent administrative authorities responsible for preserving public order, specifically when granting, refusing, terminating, canceling, or withdrawing administrative licenses.

Regarding the lack of competence, it represents one of the primary elements of the administrative decision, as it constitutes a form of illegitimacy that can be brought before the French Council of State. The Council of State played a significant role in establishing and later solidifying the legal principles governing administrative jurisdiction [2]. The lack of competence is considered part of the public order, which means that the judge has the authority to raise and address it for annulment on his own, without requiring any of the parties in the lawsuit to raise the issue [3].

Accordingly, we observe that the concept of competence in the realm of administrative regulation refers to the authority to take licensing measures to restrict freedom. The regulatory authority is not permitted to issue a license except within the limits of its prescribed jurisdiction as defined by the law. Therefore, the lack of competence can be divided into two forms: serious lack of competence and minor lack of competence. In the case of a serious lack of competence, its impact extends beyond merely annulling the action; it results in the decision losing its administrative character and becoming a material act [4].

In the context of judicial applications, we find an example in the case of "Commune de Dompierre sur Besbre" ruled by the French Council of State on December 8, 1982. The ruling stated that if the infringement on another administrative authority's competence is evident and substantial, the decision is considered null and void, with no legal effect [5].

Through the mentioned judicial ruling, we observe how the judiciary exercises its control over the element of competence, declaring the action null and void in various forms, whether it is due to objective, territorial, or temporal lack of competence [6]. Additionally, the judiciary can validate the decision if it is issued by the competent authority in accordance with the law and can invalidate decisions related to the refusal or termination of administrative licensing if they were made by an incompetent authority.

2- Control over the form and procedures

Regarding the control over the form and procedures, it is essential to recognize that, in general, the administration is not obligated to disclose its specific intentions. Therefore, the administration has the freedom to issue decisions related to the refusal or termination of licensing in the manner it deems appropriate, as long as the law does not stipulate otherwise [7].

The French jurist "La Ferrere" attributes the form of the decision and its procedures as an independent element from the competence. He argues that considering the formalities of the decision and its procedures should not be seen merely as formalities, but rather as guarantees for the interests of both individuals and the administration itself. These formalities are designed to prevent the administration from hasty decision-making without careful examination and consideration of the procedures and formalities involved [8].

As for licensing decisions, given their unique nature, the French legislator distinguished them with a special law, namely the Law of July 11, 1979, which requires the administration to state the reasons for all its decisions rejecting the granting of licenses [9]. This legislation reflects the level of concern and fear that the administration might abuse its authority by refusing to grant administrative licenses under the pretext of safeguarding public order or the public interest. However, no similar law was found in Egypt or Iraq that generally obligates the provision of reasons for all decisions rejecting the granting of licenses. Nonetheless, there are scattered legislations that require providing reasons in specific cases. For instance, in the Iraqi Law of Non-Governmental Organizations, the registration authority is obliged to state the reasons for rejecting an organization's application for establishment or registration [10]. Similarly, the Iraqi Political Parties Law mandates the provision of reasons for rejecting a political party's application [11].

Causation is considered a formal element of the decision-making process, as it relates to the formulation of the decision, in addition to other formalities and procedures determined by the laws, such as prior procedures to decision-making, like studies, opinion polls, or presentation to specialized advisory committees. Also, there are subsequent procedures after making the decision, such as publication, announcement, or notification [12].

However, the defect in form does not concern the general system unless the law explicitly states it. In that case, the court does not consider it on its own, but it must be raised by one of the parties involved [13].

Considering the aforementioned, there appears to be a necessity for issuing legislation in both Egypt and Iraq similar to the French law (July 11, 1979), which stipulates the mandatory requirement for the administration's decisions that result in denying licenses to specify the reasons for refusal. This formal requirement implies that the decision to deny or terminate the license must be clear, explicit, and written, as it concerns restricting fundamental freedoms. Thus, we find that administrative judges have the authority to review cases when the law imposes specific formalities that the administration must adhere to; otherwise, their decision is subject to cancellation.

Secondly: Oversight of Internal Legitimacy

The oversight of internal legitimacy requires that the decision to deny or terminate a license, in order to preserve public order, be based on valid reasons and compliant with the law in its content. It should also serve the purpose intended by the legislator, which is to safeguard public order in all its aspects. Therefore, the administrative judge extends their oversight to all these elements, represented by the cause, the place, and the purpose, and we will explain them through two branches as follows:

1- Oversight of the Causal Element

The causal element is considered one of the most important components of issuing administrative decisions related to the refusal of granting a license or its termination in any form.

The administration cannot act on its own without relying on a genuine and actual reason. The cause in decisions related to the denial of granting a license or its termination represents the legal or factual situation that compels the administrative authority to make its decision and the legal consequences resulting from the refusal or termination of the license. For an administrative decision to be valid and sound, the cause must be valid, existing, and justifiable [14].

Therefore, decisions refusing to grant a license are not considered valid or correct unless they are based on a genuine and actual threat to public order, extracted lawfully from established principles to preserve public order, taking into consideration the circumstances that prompted the administration to intervene [15].

Considering that decisions related to the administrative refusal of granting a license and its termination are means to preserve public order as part of administrative control measures, the oversight exercised by the administrative judiciary on these decisions usually differs from other types of administrative decisions. The administrative judge exercises broad judicial review, and this oversight takes three forms, which we will explain as follows:

A - Oversight of the Existence of a Real Threat or Danger to Public Order

Decisions to refuse granting a license or terminate it are presumed to be issued based on tangible facts, as previously mentioned. These facts typically involve a threat or danger to public order or an actual infringement of any of its elements. As a result, such decisions are subject to the oversight of the administrative judge to verify the actual existence of that threat or danger as the motivating cause for issuing the decision. If the threat or danger is not present or is insufficient, it means that the decision was made based on an erroneous foundation, which requires its annulment [16].

In this regard, the French Council of State ruled on April 28, 1989, that "in cities where the police have the authority to grant or forbid the exercise of the right to demonstrate, the decision issued is subject to the review of the administrative judiciary to examine the justifications for the prohibition and to verify their presence" [17].

This means that if the court, through the presented facts and observation of the material existence of events and the presence of the threat that jeopardizes public order, does not find sufficient justification for the decision and realizes that the reason on which the administration based its decision is not well-founded, it will proceed to annul the decision.

B - Oversight of the Legal Adaptation of Facts that Jeopardize Public Order

After the administrative judge confirms the existence of the material facts on which the reason for the decision to refuse granting a license or its termination is based, they move on to the second stage of ensuring the legal adequacy of the adaptation or description that the administration has applied to these facts. If the legal description is correct, the decision is considered valid [18]. The process of legal adaptation can be defined as "the incorporation of a specific factual situation within the framework of a legal concept that can justify the decision taken based on it" [19].

Judicial oversight of the legal adaptation of facts has witnessed significant and consecutive developments. While it used to be a matter of mere factual considerations in the past, it has now become a legal process. The legal adaptation is no longer an interpretation of facts to achieve a compromise between them and the law; instead, it is about making the law applicable to the actual situation. As a result, the process of legal adaptation is subject to judicial review.

The oversight of the administrative judiciary extends to the adaptation of facts. If it is found that the reasons on which the decision to refuse granting a license or its termination was based, as described or adapted legally, are incorrect, the decision may be annulled for being unlawful.

C - Oversight of the Importance and Severity of the Threat or Disruption to Public Order (Proportionality)

The oversight of the administrative judiciary, in principle, is initially limited to the existence of material facts upon which the reason for the administrative decision is based, followed by scrutiny of the legal adaptation of these facts as a second stage. However, an important exception to this principle allows the administrative judge to extend their oversight to assess the appropriateness of issuing the administrative decision [20].

In this context, "appropriateness" does not refer to the administration's discretion to take action or refrain from it when there is no legal obligation to do so. Instead, it refers to the selection of an appropriate measure that corresponds to the importance of the facts [21].

The oversight of appropriateness becomes evident in decisions to refuse granting a license or terminating it, as these actions are considered means of administrative control, surrounded by significant risks to individuals' liberties, and there is concern about potential violations or using them as a pretext for encroaching upon those freedoms. The administrative judge, in such cases, monitors the appropriateness of the decision to refuse granting a license or its termination based on the reason on which it is based. They verify whether the facts represent a threat or danger to public order to the extent that compels the administration to refuse granting a license or terminating it in any form, considering that such action is necessary and indispensable to address the risks threatening public order [22].

The role of the judge includes assessing the necessity and appropriateness of making such a decision and its proportionality to the degree of disruption to public order. If the judge finds that the severity of these facts does not require refusing to grant a license or terminating it, the administrative action becomes unjustified. On the other hand, if the administrative judge determines that preserving public order cannot be achieved without taking such action, the administrative action is considered justified [23].

The French Council of State, through the landmark "Benjamin" ruling, established a cornerstone in overseeing the proportionality of administrative control decisions, laying down fundamental principles. In this case, the Council of State annulled a decision by the mayor of Nevers to prohibit a public meeting due to the fear of disturbances that could disrupt public order. The Council examined the local circumstances surrounding the meeting's invitation and found that the local authorities could have maintained public order using the available police forces while allowing the meeting to proceed. Thus, the Council of State canceled the mayor's decision, as it was evident that the potential disruptions cited by the mayor did not reach a level where preserving public order necessitated prohibiting the meeting. The ruling demonstrated that the administrative judge extends their oversight to assess whether the measures taken are appropriate to the scale of the threat and danger to public order, observing the sufficiency of the measures in response to the facts causing the threat [24].

Similarly, in Egypt, the administrative judiciary established oversight of appropriateness in administrative control decisions to strike a balance between safeguarding public order and protecting public freedoms. Legal and judicial guarantees were introduced to achieve this balance, ensuring that restrictions on freedoms are only as much as required to protect public order.

The Iraqi judiciary followed the same approach as the French and Egyptian judiciaries, subjecting administrative control decisions to oversight of appropriateness to strike a balance between preserving public order and protecting public freedoms [25].

In conclusion, the scrutiny of the intrinsic value of the reasons is of significant importance in determining the legitimacy of decisions to refuse granting a license or terminating it, which restrict individual freedoms as regulatory decisions. Therefore, such decisions must be necessary and proportionate to the real situation to be capable of preventing disturbances or disruptions to public order.

2- Oversight of the Substantive Grounds and Purpose

The oversight of internal legitimacy extends beyond the grounds (causation) to include the two other aspects: the place (substantive grounds) and the purpose of the administrative decision. This will be demonstrated through two subheadings as follows:

A- Oversight of the Substantive Grounds (Place)

The administrative decision's "Rukn al-Mahall" refers to the subject of the decision, which is the impact that results in creating legal changes and establishing a new legal situation immediately upon issuance. This can involve the creation, cancellation, or modification of legal entities [26].

For a decision to refuse or terminate a license to be valid in its place, it must meet the following conditions: Firstly, it should be legally possible and permissible. This means it should not contradict the law in its broad sense, including the constitution, ordinary legislation, regulations, general legal principles, judicial rulings, and anything else considered as law. If the subject matter of the decision is impossible or non-existent, the decision is considered null and void. If the legal validity condition is not met, the decision is flawed and invalid [27].

However, in exceptional cases, the administrative regulatory authorities may issue decisions to refuse or terminate licenses without relying on regulatory provisions if these individual decisions are the only means through which the administration can stop a threat or danger to public order [28]. In such cases, the decision would be justifiable, provided that certain conditions are met.

1. The subject matter of the decision should be necessary

The decision to refuse or terminate a license should be considered necessary when there is an urgent situation or a threat that could lead to a disturbance of public order, requiring the confrontation by denying or terminating the license if it already exists. Otherwise, if the decision to refuse a license is not justified in its place, it becomes void, and it becomes the responsibility of the judiciary to annul it [29].

2. The subject matter of the decision should be effective

This means that the decision to refuse or terminate the license should be effective in preserving public order and averting the danger and disturbance. If the decision is not capable of avoiding that danger and preventing it, then it is considered unjustified [30].

3. The subject matter of the decision should be reasonable

This implies that the decision to refuse or terminate the license should be proportionate to the severity of the disturbance threatening public order. Therefore, the principle of proportionality

must be adhered to by the administrative regulatory authorities, and it is not sufficient for the procedures taken to be merely in accordance with the law and based on valid reasons. Instead, they must be in line with the level of seriousness of the danger threatening public order [31].

This idea achieves a form of balance between protecting individual rights and public freedoms on one hand and maintaining public order on the other. This encourages the administrative judge to intervene and assess the validity of decisions to refuse licenses and their appropriateness based on an evaluation of the extent of their impact on public order. The judge monitors and assesses the severity of any disruption to public order caused by the decision to deny or terminate the license, and the necessity of taking such a measure to address the disturbance or disorder in the public order.

In accordance with this principle, the Egyptian administrative judiciary ruled that nothing prevents the administrative authority, according to its established powers under the theory of administrative regulation, from issuing instructions and taking necessary and appropriate measures to avert a real danger threatening public order in any of its three known aspects: public security, public tranquility, or public health, even if this leads to restricting certain freedoms [32].

From this judgment, we observe that the judge's scrutiny over "Rukn al-Mahall" is based on assessing the proportionality of the actions taken concerning individual freedoms, ensuring they are commensurate with the level of disruption caused. If the impact is of minor significance, sacrificing the restricted freedom would not be justified. Additionally, the judge considers individual activity (the value of freedom) since public freedoms are not equally important. Lastly, the administrative measure itself is evaluated, and such a measure can only be justified if it is taken to avoid a real threat to public order that necessitates restricting public freedoms [33].

B - Oversight of the Objective Element

The objective element refers to the ultimate outcome that the administration seeks to achieve in decisions of denying or terminating licenses, and it must be embodied in the preservation of the general order with all its various components. Consequently, the administration must adhere to the limits of these purposes; otherwise, its actions would be tainted with the flaw of abuse of power [34].

The objective element is considered one of the most precise and difficult flaws in the elements of a decision since it is an intentional flaw, and proving it is somewhat challenging. It requires understanding the reason behind issuing the decision and what is going on in the decision-maker's mind [35]. The validity of all the elements of the decision, including the objective element, is necessary. If the purpose of denying or terminating a license is targeted at one element of the general order while seeking to fortify another purpose, the decision would be flawed due to the misuse of authority [36].

1- The objective of using the denial or termination of a license to pursue purposes unrelated to the general order

The fundamental principle of administrative actions is that their objective should be to achieve the public interest, including the protection of the general order. However, the administrative authority may resort to achieving purposes that are not related to the general order or any other public interest. It may issue a decision to deny or terminate a license under the pretext of protecting the general order, but its real intention could be revenge, favoritism towards another

individual, or for political purposes, among other objectives unrelated to the general order. This form of the objective element is one of the most dangerous flaws since laws are not enacted for the sake of personal interests or favoring one party at the expense of others [37].

2- The objective of using the denial or termination of a license to achieve a purpose other than the public interest, without protecting the general order:

Every administrative decision has two objectives: the first is the specific objective, determined by the legislator or inferred from the nature of the authority's competence. The second objective is the general objective, which involves achieving the public interest. Accordingly, the flaw of abuse of power is not limited to cases where the objective is not to achieve the public interest. Even if the legislator designates a specific objective, such as protecting the general order, and the administration makes its decision to achieve other purposes apart from what the legislator intended, even if it aims to serve a public interest other than protecting the general order, the decision would be flawed due to the misuse of authority [38].

As an application of the aforementioned principles, we find that the Council of State in France ruled (declaring the decision to refuse a license for establishing a cinema illegitimate since it became evident that the refusal was aimed at preventing competition with the municipal theater) (39). Similarly, in Egypt, the Supreme Administrative Court ruled (declaring the decision to revoke licenses granted to some individuals illegitimate, as the court found evidence of discrimination against certain individuals at the expense of others, and the decision did not aim to achieve the general order as claimed by the administration) [39].

Likewise, in Iraq, the General Assembly (previously) of the Council of State ruled that it found that "Baghdad Municipality prevented the plaintiff from using his property and closed it, claiming that the previous occupant owed them money. Since the plaintiff had no connection with the former occupant of the property, and Baghdad Municipality did not follow the legal procedures to collect its debts, the actions of Baghdad Municipality were deemed unlawful and abusive in the use of its authority" [40]. The above decision indicates that the administrative judiciary in Iraq annulled the administration's decision, which purported to serve the public interest represented by the administration's financial interest. However, it diverged from its designated purpose of closure to protect the general order. Therefore, the court ruled that the administration's actions were not justified, and it had abused its authority [40].

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When reviewing the judicial oversight on the denial or termination of administrative licenses in France, Egypt, and Iraq, we find that it covers all the elements of the administrative decision. This is due to the fact that this procedure involves interference with public rights and liberties, and ultimately, it is the judge's role to evaluate the validity and adequacy of these decisions to achieve the broad meaning of the general order.

Despite the discretionary power granted to the competent administration to grant or refuse licenses, the French legislator, according to the law (July 11, 1979), did not make it an absolute authority but obliged it to substantiate its decisions to refuse licenses to ensure that it was not done in an arbitrary manner. Otherwise, the decision would be considered void. The purpose of this requirement is to inform the license applicant of the reasons for the refusal and enable them to appeal in a timely manner before the judiciary.

One of the solutions adopted by comparative countries such as France and Egypt is to grant the administrative judge exceptional non-traditional powers to mitigate the application of the principle of prohibition of directing orders to the administration by the administrative judge through a "stay of execution" lawsuit. This is a subsidiary precautionary lawsuit, alongside the original annulment lawsuit. The aim is not to cancel the administrative decision but to suspend its legal effects as intended by the administration. This applies to decisions of refusal or termination of licenses. It is a lawsuit based on two interrelated pillars: seriousness (irreparable harm) and urgency. The court can only rule on the stay of execution if both conditions are met in the contested decision [42]. This approach helps avoid consequences that cannot be remedied through the cancellation or withdrawal of the license, even if it is a temporary solution, it serves the purpose in many cases, especially in withdrawal and cancellation decisions.

In a later and unprecedented development in the field of protecting fundamental freedoms, the French legislator granted the judge the authority to issue orders to the administration according to the law (June 30, 2000) to protect one of the fundamental freedoms in cases of serious violations under Article 521/2 of the Administrative Justice Code. The law stipulates that "the urgent administrative judge, upon request submitted to him in urgent cases, has the authority to order all necessary measures to protect fundamental freedom in cases of serious and manifestly unlawful infringement by a public or private legal entity responsible for managing a public facility while exercising one of its powers. The urgent administrative judge shall order this action within 48 hours" [43]. From the above text, it can be deduced that the possibility of intervention requires formal conditions, such as submitting a request that indicates the facts of the serious violation of one of the fundamental freedoms and asks the judge to order all necessary measures to put an end to this violation. In addition to formal conditions, there are objective conditions, such as the request being based on the factors of seriousness and urgency, and there must be a serious and manifestly unlawful infringement for the above-mentioned article to be applied. The infringement must occur on one of the fundamental freedoms, i.e., the public liberties guaranteed by the constitution. Lastly, the judge must exercise his jurisdiction within 48 hours, during which he takes the necessary measures to suppress this violation of fundamental freedoms and has broad discretionary power. This recourse can be utilized in case of refusal or termination of a license to protect one of the fundamental freedoms if the mentioned conditions that require the judge's urgent intervention are met.

As for Iraq, there is no explicit provision in the effective law of the Council of State that allows for suspension of implementation. Similarly, there is no provision in the Iraqi Council of State law that allows the urgent judge to intervene in an urgent manner to protect fundamental freedoms. Although the Civil Proceedings Law addressed the urgent judiciary, it limited it to various issues that did not include the protection of public liberties [44]. There is a necessity to have legislative intervention that transforms these principles and judicial interpretations applied by comparative countries into binding legal texts, either within the Council of State law itself

or through legislation of a specific law for administrative proceedings to achieve a balance between the exercise of authority on one hand and the protection of rights and freedoms on the other, with the presence of a specialized administrative judiciary with integrated powers to ensure this balance.

Recommendations

1. Introduce a specific law in Iraq and Egypt that mandates the review of all administrative decisions of refusal or termination of licenses, similar to the French Law (11/July/1979), to make it a general and obligatory principle to reject licenses or terminate them.
2. Propose substantial amendments to the Iraqi Council of State Law No. 65 of 1979 to ensure oversight of administrative actions through the following measures:
 - a. Grant the Council of State general jurisdiction over administrative disputes by amending Article (7/IV) of the law to read as follows: "The administrative judiciary shall have general jurisdiction to adjudicate all individual and regulatory administrative decisions issued by officials and bodies in ministries, non-ministerial bodies, the public sector, and professional unions upon request of the concerned party..."
 - b. Explicitly state the jurisdiction to suspend the implementation of decisions when their execution would result in significant harm to the purpose of the annulment lawsuit and lead to irreparable consequences based on reasonable grounds.
 - c. Grant the administrative judiciary urgent jurisdiction, as is present in France under Law (30/June/2000), to protect fundamental rights in cases of serious violations. Add provisions to the Civil Procedure Law or the Iraqi Council of State Law to keep pace with comparative countries, where the administrative judiciary can promptly safeguard individuals' rights and public freedoms.

By implementing these recommendations, both Iraq and Egypt can strengthen their administrative judiciary systems, enhance the protection of individual rights and freedoms, and ensure that administrative decisions align with the principles of legality and fairness.

Conclusion

In conclusion, based on the findings of this study, we can draw the following conclusions and recommendations: Administrative judiciary serves as a genuine guarantee for individuals to resort to when seeking protection for their rights and freedoms and the application of the principle of legality. It is the competent judicial authority to monitor the decisions of refusal or termination of licenses in all its aspects, both external legality represented by jurisdiction and form, and internal legality represented by the grounds, competence, and purpose.

The administrative judiciary in Iraq still suffers from limited and restricted jurisdiction compared to comparative countries. Additionally, there is no explicit provision granting it the power to suspend the implementation of administration decisions that affect public rights and liberties in the Council of State law, especially those decisions with irreversible consequences. Furthermore, there is no urgent administrative judiciary that deals with issues related to fundamental rights and freedoms similar to the administrative judiciary in France. As a result, the administrative judiciary in Iraq is limited and constrained.

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