Administrative Regulation: How do States Balance Security and Freedoms without Overstepping the Law?

A Comparative Analytical Study

Mohammed Abdullah Al-Zubeiri
Legal Researcher in Public Law,
College of Law - Qatar University

Introduction: Administrative Regulation between Necessity and Respect for Freedoms

In the face of growing security, health, and economic challenges, administrative regulation has become indispensable for ensuring societal stability and organizing public life. These measures are implemented to prevent crimes, protect public health, and regulate daily activities that may affect security and public order.

However, the central question remains: To what extent can administrative regulation restrict public freedoms? And is it always applied in a manner that respects individual rights and remains within the framework of legality?

This study explored the concept of administrative regulation, its objectives, its impact on fundamental rights, and the key legal issues it raises. It also analyzed international experiences that can serve as models for balancing security and freedom.

The Concept of Administrative Regulation and Its Legal Evolution

Administrative regulation refers to a set of measures and procedures taken by the executive authority to maintain public order, which includes three main pillars:

1. **Public Security:** Preventing crimes, protecting properties, and regulating demonstrations and major events.
2. **Public Health:** Preventing epidemics, regulating the healthcare sector, and monitoring food products.
3. **Public Tranquility:** Regulating noise pollution, commercial activities, and the use of public spaces.

Distinguishing Administrative Regulation from Judicial Regulation

Administrative regulation is primarily preventive, aiming to prevent problems before they arise, whereas judicial regulation intervenes after a violation occurs to impose legal sanctions.

Historically, the significance of administrative regulation has grown with the development of the legal state, as governments are required to maintain public order without exceeding constitutional limits that protect individual freedoms.

Objectives of Administrative Regulation: Between Protecting Society and Controlling Behavior

Administrative regulation is implemented to achieve several fundamental objectives:

Ensuring Public Security: By regulating public events, monitoring dangerous activities, and preventing behaviors that threaten order.

Protecting Public Health: By enforcing health regulations, monitoring medical facilities, and regulating the trade of pharmaceuticals and food.

Preserving Public Tranquility: By restricting working hours for noisy businesses, organizing the use of public facilities, and monitoring noise and environmental pollution.

However, some strict measures may infringe on individual freedoms, making it essential to establish clear legal frameworks that prevent potential abuses.

How are Administrative Regulation Measures Implemented?

Authorities employ several tools to enforce administrative regulation, including:

- Issuing Regulatory Legislation: Such as laws governing working hours, traffic regulations, and public hygiene.
- Imposing Administrative Sanctions: Such as fines for violators or the closure of establishments that fail to comply with regulations.
- Direct Interventions: Such as dispersing unauthorized gatherings or restricting certain high-risk activities to protect society.

Administrative Regulation: Between Necessity and Restriction of Freedoms

Despite its importance, administrative regulation can sometimes restrict fundamental freedoms, such as:

Freedom of Movement: Travel bans or quarantine measures, as seen during the COVID-19 pandemic.

Freedom of Expression and Assembly: Prohibiting protests or imposing media restrictions.

Digital Privacy: The use of electronic surveillance technologies without clear legal constraints.

Thus, a delicate balance must be maintained

between ensuring public order and safeguarding fundamental rights.

Legal Challenges of Administrative Regulation

Administrative regulation poses several legal challenges, including:

1. **Potential Abuse of Executive Power**: In some countries, administrative measures are used as tools of repression rather than for protecting society.
2. **Ambiguity in Legal Provisions**: Some laws governing administrative regulation are vague or insufficiently defined, leading to conflicting interpretations.
3. **Weak Judicial Oversight**: In certain cases, executive decisions are made without the possibility of legal appeal, raising concerns about the respect for the principle of legality.

International Experiences: How do Different Countries Apply Administrative Regulation?

1. **France**: State of Emergency as a Security Model
   The French government implemented emergency measures during the 2015 Paris attacks, granting authorities the power to conduct home searches without judicial approval. This measure sparked widespread criticism due to its infringement on freedoms.
2. **China**: Digital Surveillance and Social Control
   China employed advanced administrative regulation mechanisms, such as facial recognition technologies and social credit scoring systems, where individuals' behaviors are monitored and rated based on their compliance with laws.
3. **United States**: Restriction of Public Gatherings
   During the COVID-19 pandemic, some U.S. states enforced strict restrictions on public gatherings and business operations, leading to legal challenges over whether these measures violated constitutional rights.

How Can We Balance Administrative Regulation and the Protection of Freedoms?

To ensure a fair balance between security and freedom, the following recommendations are proposed:

1. Establishing clear and well-defined laws that precisely outline the scope of administrative regulation.
2. Subjecting administrative regulation decisions to periodic judicial review.
3. Ensuring transparency in decision-making related to administrative regulation.
4. Strengthening citizens' rights to challenge arbitrary administrative decisions.
5. Minimizing reliance on digital surveillance technologies except in extreme necessity.

Conclusion

Administrative regulation is a necessary legal tool for ensuring the stability of society and maintaining public order, but it must be exercised within a strict legal framework that protects fundamental freedoms. Countries that implement effective administrative regulation measures can successfully address security, health, and social challenges. However, excessive use of these measures can lead to the erosion of basic freedoms and a disconnect between the state and society.

Balancing security and liberty is both a legal and political challenge that demands cooperation among legislative, executive, and judicial bodies, as well as active participation from civil society in overseeing the enforcement of administrative measures.

Administrative regulation should function as a safeguard for society rather than a mechanism for repression. Future regulatory frameworks should be based on clear legal principles, effective oversight mechanisms, and transparency in decision-making. Governments must also develop legal instruments that ensure a balance between security and freedom so that administrative measures remain effective without becoming tools for absolute control.

Ultimately, the most critical question that must always be asked when imposing any administrative measure is:

Is this action necessary?

Is it proportional to the intended objective?

The response to these questions defines the legitimacy of these measures and their alignment with the principles of justice and fundamental human rights.