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**Public Freedoms and Public Order within the jurisprudence of the French  
Council of State**

**-From the dialectic of nature to the inevitability of comparison–**

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**Abstract**

In order for the administrative Judge to effectively protect the various public freedoms, they must possess a comprehensive vision and an intentional ideology. This allows them to act as a true guardian against any threats that may impede these freedoms, including exerting control over disciplinary administrative decisions that may restrict them. While the protection of public freedom is a crucial objective, it often comes into conflict with the preservation of public order, which is equally important. The exercise of freedom may sometimes exceed legal limits and pose a threat to public order, while a singular focus on maintaining public order can lead to restrictions on freedom. Therefore, the administrative judge must strive to achieve a delicate balance between protecting public freedoms and maintaining public order, with the ultimate goal of reconciling both objectives within the public order.

**Keywords ; administrative judge, maintaining public order, public freedoms, public Security.**

**Introduction**

Since the end of the nineteenth century, the French Council of State has been aware of the need to achieve reconciliation between measures to ensure public order and the protection of fundamental rights and freedoms, so it narrowed the application of the theory of sovereign actions to guarantee public freedoms to impose disputed tutelage <sup>1</sup> on the actions of administrative authorities: emphasizing the need to protect individual freedoms and rights. Thus, it turned from the guarding dog the privileges of public authority, as Maurice Hauriou <sup>2</sup> called, to the strongest constitutional guarantee against administrative arbitrariness, which resulted in the emergence of a new face in the French administrative judge in general, and the State Council judge in particular – with a new aspect and vision so it can play the role of reconciliatory who is keen on protecting the freedoms of the citizen from one side while keeping the public order from the other side.

The balance between protecting individual freedoms and ensuring public order is not an easy matter, but it is a real challenge that the administrative judge faces on a daily basis, because legally guaranteed public freedoms are frequently used to disrupt public order because their practitioners exceed the limits set. The clash between the exercise of freedoms and a legitimate justification for restricting them makes balancing conflicting interests an almost impossible task and reconciling contradictory goals a very complicated matter.

**Accordingly; to what extent did the French Council of State success in reaching such difficult compromise between the dialectic of bayonet protection while maintaining public order?**

We intend to address this issue through an inductive and analytical approach that focuses on the most recent findings for the French Council of State's jurisprudence from 2016 to 2021 as per the following plan:

**First:** The concept of judicial oversight on public freedoms and public order. (Between breadth and dialectic).

**Second:** The legal basis for the administrative judge's supervision is to protect public freedoms and maintain public order.

**Third:** The French State Council between freedom and maintaining public security from 2016 to 2021.

**First: Concept of judicial control over public freedoms and public order, from dilation (expansion) to dialectic;**

Before delving into its practical applications within the latest jurisprudence of the French State Council, it is important to establish the legal basis for this oversight and its underlying principles.

### 1. Expanding the concept of oversight by the French administrative judge

The judge plays a crucial role in protecting public freedoms and maintaining public order.

This oversight extends to all administrative enforcement decisions made by both central and local authorities that are aimed at preserving public order. Article 10 of the Universal Declaration of Human Rights also acknowledges the importance of public order by stating that individuals cannot be punished for their opinions, even if they are religious, as long as these opinions do not threaten public order imposed by law. Following is the provision thereof: **"No one shall be punished for his opinions, whether religious or otherwise, so long as expressing them does not jeopardize the public order imposed by law."**

To understand the concept of public freedoms and public order, we must first consider two important concepts: judicial oversight<sup>3</sup> and administrative seizure procedures<sup>4</sup>. Judicial oversight refers to the power of judges to resolve legal disputes and uphold justice. On the other hand, administrative seizure procedures involve the actions taken by administrative authorities, particularly those in charge of enforcing public order, to restrict individual freedoms in order to maintain social discipline<sup>5</sup>. To ensure that public order is maintained while also protecting basic freedoms, the idea of oversight by the administrative judge has been expanded. This includes addressing three important elements that demonstrate the breadth and depth of this concept.

#### a. Expanding the concept of public freedoms:

The concept of public freedoms has been affected by both federal and international human rights laws, and it is one of the broadest legal terms in French law. Public freedoms refer to all freedoms recognized, organized, and guaranteed by public authorities<sup>6</sup>. Over time, the concept of public freedoms has expanded to include not only fundamental freedoms but also those associated with federal public order. This expansion has led to an increased role for the administrative judge in protecting federal public order<sup>7</sup>.

This was reflected clearly. In case freedom is the case giving each person the right to act without external force<sup>8</sup>, then it is difficult to determine what is essential as a right in France because every intellectual current and writer has their own view of essential rights<sup>9</sup>. Former President of the French Council of State, Jean Marc Sauvé, highlighted the importance of clarifications stating "the

individuality of the judge and the collection of freedoms requires and needs to provide clarification....".<sup>10</sup>

### **b. The Extent of the Concept of Public Order:**

The term "public order" is a complex <sup>11</sup> and widely used term. Brigadier General Horio described it positively as a "material and external system" that aims to establish a system that does not interfere with the moral system of ideas. The French legislator defined public order according to Law 05/04/1884, and it was later derived from the text of Article 2/2012 of the Local Communities Law, which stated that "Municipal control aims to ensure good public order represented by security, health and public tranquility." The concept of public order in French law was originally defined with three traditional elements: security, health, and tranquility. However, this definition is seen as inadequate in light of the modern understanding of public order, which includes additional elements. This new understanding of public order requires a reevaluation of the traditional elements and a consideration of modern elements. The first element, public security, is meant to provide the necessary conditions for people to exercise their freedoms and basic rights in a safe environment. The second element, public health, is focused on protecting people from diseases and epidemics. In recent years, the scope of public health protection has expanded to include a broader concept.

The initial aspect of public order is public security, which aims to establish an environment that guarantees people's ability to exercise their fundamental rights and freedoms without any fear of danger or threat<sup>12</sup> to their lives and belongings. Public health, on the other hand, refers to safeguarding people against diseases and epidemics that may put their lives at risk. The scope of public health protection in France has expanded beyond mere disease control and epidemic prevention, encompassing a more comprehensive notion since the French State Council's decision in 2007.

Public tranquility is the third traditional element of public order, which ensures that citizens can live peacefully and without disruptions to their comfort. The administrative judge is responsible for taking measures to maintain this peace and prevent disturbances caused by protests or demonstrations that may interfere with the activities of citizens. The concept of public tranquility has evolved to include modern elements such as protecting citizens from various types of noise in public life.

As the jurisprudence of the French Council of State developed, the concept of public order expanded to include more than just security, health, and tranquility. This led to the emergence of a modern concept of public order called moral public order, which encompasses various aspects such as morals and public ethics. A violation of public morality is now considered a threat to public order. This was known as "Morals of Public Order"<sup>13</sup>.

The French administrative judiciary introduced the concept of public morality early on in the "Dame Laugier" case in 1913, where a theatrical show was banned because it was inconsistent with public morals.<sup>14</sup> One of the most famous decisions regarding this matter is the "Les films Lutétia" case, where the

French administrative judiciary established public morals as a element of public order by ruling that the mayor of Nice's decision to ban the showing of a film titled "Le feu dans la peau" was legitimate due to the immoral nature of the film.<sup>15</sup>

The idea of public order evolved beyond its original form and expanded to encompass additional elements. In 1995, the French administrative judiciary included human dignity as a modern aspect of public order, inspired by Article 2 of the "Bioethics decision" made by the Constitutional Council. This addition was made in the "Morsang-sur-Orge" case to safeguard certain bird species or plant varieties, as a means of preserving nature's beauty. Pursuant to which, the human dignity was raised to the top priorities of Constitution<sup>16</sup>.

The French Council of State ruled that a decision made by a mayor to prohibit a show where people of short stature are thrown for the amusement of the audience is legitimate. The show was deemed as harmful to the dignity of those with disabilities or deficiencies<sup>17</sup>. The inclusion of human dignity as a element of the modern public system is considered a significant advancement for legislative and judicial bodies. This move indicates that administrative bodies are no longer satisfied with merely safeguarding public safety, health, and peace. They are now additionally focused on protecting human dignity from any type of discrimination, which may hurt the feelings of individuals based on their disability, religion, beliefs, or affiliations. Despite the diverse uses and implications of this modern element, which even extends to the dignity of the deceased in French civil law, its features need to be clarified further through the jurisprudence of the French Council of State.<sup>18</sup>

Marie Gautier<sup>19</sup> coined the term "elasticity of public order" to describe the flexible and expansive nature of the concept in France. Public order now encompasses both a material public system and a moral one. The French Constitutional Council's decision on 18/01/1995<sup>20</sup>, adopted a broad interpretation of public order, which gave the watchful judge increased power to protect it. As a result, the French Council of State's authority now influences the federal judiciary, leading to the emergence of various types of public order, including federal public order (first type), European public order<sup>21</sup> (Second type), and general order in French administrative law (third type).

### **C. Dilation of the administrative judge's oversight as a result of the competition between the administrative control authorities**

Etienne Picard introduced the term "competition of administrative control authorities" to describe the conflicts and overlaps between different administrative bodies that aim to protect public order<sup>22</sup>. Dilation of the circle of administrative control bodies, as well as the overlapping of their powers, affects the competence of the administrative judge to supervise thereon. Accordingly; we find him declaring, emphasizing in all his decisions that his oversight is inclusive of all decisions issued by public law persons, as well as private law persons entrusted with a public service.

In this context, it is worth noting that the French Council of State's circle of oversight has expanded as a result of the expansion of the circle of persons involved in maintaining public order in France, where the jurisdiction of



administrative control authorities exercised by persons of public law has expanded to include both central and local administrative control authorities. Rather, it includes all private law persons entrusted with a public utility, as the latter assumes the authority to issue administrative control decisions in the course of carrying out its mission to maintain public order.

## **2. Dialectic of the concept of administrative judge oversight to protect public freedoms and public order**

The administrative judge finds himself in a delicate position based on absolute dialectic, as he is the judge of public freedoms seeking to protect them from any infringement by law enforcement interests, and the public order judge protects him from every threat he lurks under the pretext of practicing public freedoms such as freedom of expression, worship, assembly, and going and coming, which forces him to seek a balance between the exercise of freedom and the protection of law enforcement interests, which forces him to seek a balance between the exercise of freedom.

There is a contentious argument between exercising freedom as a general rule and using administrative control mechanisms as an exceptional measure <sup>23</sup> to maintain public order. For example, the right to the sanctity of housing means that every person's home on French soil is an inviolable refuge that no one can access at night except in case of emergency. During the day, entering the house is only possible for specific reasons based on a law or public authority order, which contradicts the content of the administrative inspection authority established for security purposes to preserve public order<sup>24</sup>. The oversight of the administrative judge supervising the administrative inspection is mainly based on the concept of the dialectic between freedom as a general rule and administrative control as an exception.

The dialectic between exercising individual freedoms and restricting them for the sake of public order arises not just from conflicting interests, but also from the diversity of the public interests that need protection has resulted in an expansion of the administrative judge's oversight and the various forms it takes. Although the term "public interest" has been commonly used in France for nearly two centuries, it was not clearly defined in successive French constitutions, making it both broad and loose in comparison to Spanish and Portuguese legislation. The French concept of the public good is voluntarist, with the state defining it as the transcendence of private interests. This is in contrast to European law, which is "a law without a state" according to Laurent Cohen-Tanugi, based on the idea of a general European interest that supersedes the national interests of member states <sup>25</sup>.

The administrative judge's authority reflects the natural dialectic between freedom and public order, and it is difficult for him in many cases to set the boundaries between freedom of expression and transgression and the rights and dignity of others at the same time. for their fundamental freedoms <sup>26</sup>, but we find him in most of his decisions seeking to balance dialectical concepts.

## **Second: The legal basis for the supervision of the administrative judge is to protect public freedoms and preserve public order**

In preserving public freedoms and public order, the French administrative judge draws on a solid legislative foundation that has two legal bases. The first is the administrative judge's authority to protect basic rights and public freedoms, whether in his capacity as an emergency judge of the freedoms enshrined in Law No. 597-2000 regulating the provisions of urgency before administrative courts<sup>27</sup>, or as the judge of the decisive issue in every administrative decision that affects a certain freedom, which is the authority derived from the beginning of Anglo-Saxon law, then the authority of the judge to limit the exercise of public freedoms in order to preserve public order, that was devoted many centuries ago for the citizen's right deprived from practicing freedom to recourse Judiciary for recovery thereof<sup>28</sup>.

Then; the German Courts that exerted efforts and finally – at the third level<sup>29</sup> - Federal Courts. Second of which is the Judge's authority to restrict practicing the freedoms to preserve the public order derived primarily from legal provisions regulating incitement to discrimination and hatred, whose roots extend first to the Freedom of the Press Act of 1881<sup>30</sup>.

The bill proposed by René Pleven, who was the Minister of Finance, was aimed at fighting racial discrimination in France. The bill was approved by the majority and it criminalized the exercise of any freedom that led to defamation, insult, incitement to discrimination, hatred, or ethnic violence, as mentioned in Articles 32 and 24 of the bill<sup>31</sup>. As a result, this bill established the initial legal boundaries for the exercise of freedoms in France.

By adopting a vast legal arsenal of legal texts combating hate speech in all fields as a violation of public order, the French legislators succeeded in establishing a coherent legal system to protect citizens from any discrimination or incitement that threatens public order, beginning with the preamble to the Republic of 1946 Constitution, which affirmed the sacred rights of every human being, without discrimination based on race, religion, or belief<sup>32</sup>. Throughout the order of 1944 regulating public authorities in France, and the law of automatic information and freedom, which prohibited the storage of information revealing a person's ethnic origins, political, philosophical, or religious opinions, thereby endangering public order<sup>33</sup>, as well as "Auroux" law, which prohibited any threat to public order caused by discrimination between institutional workers<sup>34</sup>, and the "Gayssot" law of 1990, which criminalized any breach of public order caused by anti-Semitism<sup>35</sup>, as was followed by the issuance of Law 88-2003, which raised the ceiling of penalties for crimes of a discriminatory anti-Semitic nature<sup>36</sup> or, up to the 2019 law related to media freedom and crimes related to disturbing public order by promoting hate speech on the Internet.

### **Third: The French Council of State between freedom and commitment to maintain public security from 2016 to 2021:**

The French administrative judge seeks to strike a balance between ensuring the exercise of freedoms on the one hand and preserving public order from all abuse or abuse in the exercise of freedom on the other, as evidenced by addressing the balance between freedom and traditional public order in the form of maintaining public security, and the reading reflects this. The State Council's extensive decisions from 10/02/2016 to March 2021 show that the State Council judge's raising of the issue of threatening public order appears almost consistently, first in the context of his supervision of incitement to terrorism, and then in the context of his control of incitement to anti-Semitism.

#### **1. Balance between public freedoms and the threat to public order by promoting violence and terrorism**

His oversight in this field varies, but it includes his oversight of the President of the Republic's decisions to dissolve religious associations, as well as his oversight of the Minister of the Interior's decisions to place him under house arrest or administrative control, and over decisions to exile from the national territory <sup>37</sup>. The extensive reading of French Council of State decisions demonstrates the primacy of maintaining public security over protecting the exercise of public freedoms, as evidenced by the following evidences:

##### **a. Freedom to form religious associations and maintain public security:**

The French Council of State has the authority to dissolve religious associations, which it does periodically based on the legitimacy of the President of the Republic's decisions to do so. The Council makes these decisions based on the following evidence”

- The associations' threat to public security, which includes members' incitement to hatred, violence, and discrimination. The administrative judge considers the President's decisions legitimate based on evidence of the association's activities, such as promoting terrorism by establishing relations with terrorist groups. The State Council uses terms like "publicizing people arrested for terrorism crimes" and "attracting the public" to show the incitement aspect <sup>38</sup>, particularly in cases like the "association Rahma de Torcy" <sup>39</sup> that glorify martyrdom for the sake of God and incite against the West, infidels, and Shiites.
- The State Council, in its ruling on the "envie de rêver" case, emphasized that incitement must be direct and general for an association to be dissolved. Merely being associated with another association with limited connections does not lead to dissolution based on evidence of the latter's incitement to breach public order <sup>40</sup>. Additionally, evidence of members' personal involvement in breaching public order does not necessarily lead to the dissolution of the association, as the Council distinguishes between the involvement of members and that of the association itself. The publication of threatening letters by members on their personal accounts does not justify the



closure of the association unless it is proven that the association itself published such letters or emails that incite violence, in contrast to the case of the Association of Muslims of Lagny-sur-Marne, which directly spread radical Islamic teachings on its account, leading to its involvement in hateful religious activities.

- The French Council of State requires direct incitement to hatred as a necessary condition for declaring a threat to public order. However, in cases where the incitement is not direct, such as a statement made by a mayor to friends that racial equality is not mandatory, it should not be considered a threat to public order. In such cases, freedom of expression cannot be restricted. Regarding publicity, the Council of State has ruled that a mayor's statement that "it seems that the Germans have not committed sufficient crimes" is not considered incitement to hatred, despite being filmed and posted on social media. The Council of State reasoned that since the video was filmed without the mayor's permission and was not intended to promote his opinion, it cannot be deemed incitement to hatred.
- The French Council of State has ruled that the authorities responsible for administrative control are independent, particularly when they take action to limit criminal behavior. However, they must exercise caution when there is no criminal conviction, ensuring that the evidence clearly shows involvement in terrorism <sup>41</sup>. The French administrative judge takes a strict approach in prioritizing public security over the exercise of freedom of religious associations. The judge infers the threat to public security as soon as physical evidence is available, even without a proven criminal conviction.

#### **b. Freedom of residence in the face of maintaining public security:**

In accordance with Article L, the administrative judge is subject to the control of the threat to public order within the framework of his control over the Governor's decisions (expulsion) deporting foreigners from France. If one of the following conditions is met, a French threat to foreigners threatens public order:

- In a decision issued on 10/02/2016, the French Council of State ruled that it posed a threat to public order, jeopardizing the State's basic interests <sup>42</sup>. This reflects the State Council's adoption of a broad and comprehensive vision of public order as all of the fundamental elements upon which French society is built.
- Provided that the threat to public security is expressed clearly and explicitly, as stipulated on 15/05/2019 that threatening is practiced against a person or a group of self-identified persons or against foreigners residing in France by inciting them because they do not belong to the French nation, beginning in 1997, though he later abandoned the requirement of direct effect, considering that merely praying for the demise of the State of Israel means incitement to violence and hatred A serious violation of public security<sup>43</sup>.

## **2. Balance between freedoms and the threat to public security by promoting anti-Semitism violence in normal cases:**

The French Council of State is broadening its definition of incitement to anti-Semitism as a threat to public security, putting public security ahead of freedom of expression, as evidenced by the following elements:

### **a. Freedom of expression and the threat of Semitism**

The French administrative judge is known for being strict when it comes to freedom of expression, particularly regarding anti-Semitism. The judge does not require explicit verbal expression to consider something a threat to public security. In the case of the theatrical show "D...dans la guerre", the judge considered the existence of an indication of incitement to anti-Semitism in the advertising banner to be sufficient to justify the mayor of Marseille's decision to prevent its presentation without verifying its content. The same approach was taken in the case of "société la plume" dated 13/11/2017 <sup>44</sup> – the same as in the case of "Imam M.A." where judge inferred anti-Semitism through the symbol and reference without delving into the content of the theatrical show itself.

### **b. The relation between freedoms of worship and forming associations with anti-Semitism**

On 01/04/2016, the French Council of State considered that the Minister of the Interior's decision to limit the imam's residence at his residence in "Paray-Vieille-Poste" was legitimate to repeat violent anti-Semitic supplications in France mosques <sup>45</sup>. It is noted in this regard that the judge of the Council of State frequently associates Anti-Semitism, by adopting anti-Western thought and adopting Islamic jihadist theories, which makes it rule on the legitimacy of exile decisions from French soil, as well as determining residence based on that<sup>46</sup>.

The majority of the French Council of State's efforts to destabilize public security revolve around inciting anti-Semitism, as its concept is frequently associated with praising terrorism. This necessitates limiting her freedom to form an association on 25/11/2020 <sup>47</sup>, just as the videos and written speeches calling for the demise of the State of Israel, such as incitement to hatred, discrimination, and violence justifying the dissolution of associations, were promoted on 22/11/2018 via social media <sup>48</sup>.

## **3. Public freedoms and maintaining public order after declaring a state of emergency**

The declaration of the state of emergency as an exceptional circumstance by Decree 1475/2015 on 14/11/2015 affected the ideology of both the French legislator and administrative judge, as the philosophy of the French administrative judge changed due to his fear of any actions aimed at public order in general and public security in particular. We reach this conclusion after reviewing the following evidences:

### **a. Restricting public freedoms on the mere suspicion of threatening public security**

The French administrative authorities have been given the power to restrict certain freedoms, such as the right to move freely, to live a normal family life, and to inspect administrative areas without intervention from the criminal judge<sup>49</sup>. The administrative judge has also limited freedom of worship, based on the presumption that the arrival of young people to pray in a mosque far from their homes implies incitement to hatred and violence. The judge has shown a willingness to restrict freedoms in exceptional cases, such as not suspending the governor's decision to close the "mosquée d'Ecquevilly"<sup>50</sup> due to the imam's incitement to violence against women, and his remarks promoting errors in Jewish and Christian religions<sup>51</sup>.

#### **b. Expanding the powers of the administrative judge in oversight of threats to public security:**

The French administrative judge now enjoys wide powers within the framework of his supervision over the protection of public freedoms and the maintenance of public order as follows:

- **Granting the administrative Judge the authority to monitor confidential files of police and intelligence:**

On 06/11/2002, the French State Council issued a recent jurisprudence in the "Epoux Moon" case, granting the administrative judge the right to adjudicate in cases filed against "CNIL," as he can exercise a new authority to monitor the appropriateness of its decisions issued in the context of processing the personal data of the persons addressed. With the arrest decisions based on their incitement to hate speech, which gave him access to the confidential files of the police and intelligence services<sup>52</sup>, demonstrating the weight of the French administrative judge and his growing role in this field, as it is very close to both the investigative judge and the criminal judge.

- **Giving the judge the authority to supervise administrative search and inspection decisions:**

As the French legislator was clearly affected by the development of jurisprudence, the jurisprudence allowed the French State Council to enrich the law of 30/06/2000, giving the administrative judge the authority to order whatever he deems necessary to protect the basic freedoms that the administration has damaged, which gave the judge the authority to monitor administrative inspection decisions les perquisitions administrative, as well as compensation for it after the control was imposed on it by the criminal judge<sup>53</sup>.

The summary judge's authority is similar to that of the investigating judge: The French administrative judge now has more power in overseeing decisions to place individuals under house arrest and the methods used to enforce them. The judge is allowed to evaluate whether it is appropriate for the individual to be confined to their home, but their control is more limited than that of the trial judge. The Council of State has determined that evidence presented by the

government can be used to support the decision, but the judge cannot force the government to reveal their sources or methods. The judge must approach this evidence with suspicion if it is vague, but may review it if it is detailed

### Conclusion

During the period of 2016 to 2021, the French Council of State showed a strong determination to maintain a balance between safeguarding individual freedoms and upholding public order. Their extensive review of legal cases demonstrated a commitment to protecting freedoms while also ensuring that they were not abused or extended beyond legal boundaries. Additionally, the Council of State took measures to preserve public order from any harm or infringement. This task is challenging because balancing freedom and its restrictions is complex, as it involves navigating the tension between the rule and the exception. In order to find a balance between protecting public order and upholding individual freedoms, the French administrative judge has developed a moderate ideology. While recognizing various freedoms, such as freedom of residence, worship, and forming religious associations, the judge places deliberate restrictions on them when they are used to promote hatred, terrorism, or anti-Semitism. However, after the state of emergency was declared in 2015, the French Council of State took a strict approach, restricting public freedoms on the mere suspicion of a threat to public order. In doing so, the council prioritized the protection of public order over the exercise of freedom. For instance, the council restricted the freedom of movement based solely on the possession of books that discuss infidels, and closed a mosque due to an influx of young worshipers from afar, even though there were other places of worship available nearby.

The French administrative judge has expanded beyond the traditional boundaries of their role, which was previously commended by Brigadier General "Jean Rivero" thirty years ago. They have adopted a new approach, expanding the powers of summary and subject matter judges to a greater extent, similar to those of the investigating and criminal judges. The judge has even taken control over police and intelligence reports and administrative inspection decisions, even when they are confidential, before ruling on the existence of a threat to public order. This approach brings the administrative judge much closer to the authority and responsibilities of a criminal judge, demonstrating their commitment to accuracy and pursuit of justice. The well-known saying by jurist "**Bernard Pacteau**", "the judge leads change," is appropriately reinforced by these developments<sup>54</sup>.

<sup>1</sup> -Commissioner Romieu was the first one using the term la tutelle contentieuse in his conclusions in the "Jacquin" case of 11/30/1906, see in this regard:

- **Jean Marc SAUVE**, « Le conseil d'Etat et la protection des droit fondamentaux », université de Nagoya, 27/10/2016.

<sup>2</sup> **Maurice HAURIOU**, « Le développement de la jurisprudence administrative depuis 1870 », Bulletin de la société de législation comparée, 1922, p.236 .

<sup>3</sup> -Oversight is defined as supervision and guidance. As for the judiciary, it means the language of judgment, separation, and cutting. It is said that he judges that he judges. He is a judge if he judges and separates. in this regard,

- Abdul Karim Zaidan, The Judicial System in Islamic Sharia, Al-Bashaer Library, Beirut, 1989, p.11.

<sup>4</sup> -Control is defined linguistically as the accuracy of the definition, so it is said to control the matter in the sense of specifying it precisely, as it means the arrest of a person who was in disguise, and it also means the written recording of the elements for fear of the disappearance of their features, and it is also known as the return of things to their natural and consistent proportions and the provisions of the law, but in French it is pronounced "police" is derived from the Latin term "politia" and the Greek "politea", which means the administration of the city. See in this regard:

- Soleimani Hendoun, Administrative Control Authorities in the Algerian Administration, PhD thesis in Law, Faculty of Law, University of Algiers 1, 2012-2013, pp. 15, 16.

- [Larousse.fr/dictionnaires/français/polis/62149](http://Larousse.fr/dictionnaires/français/polis/62149), consulted on 14/03/2021.

<sup>5</sup> **Romain DEMANGEON**, Les concours de police, école doctorale, université de Lorraine, 2020, p.19.

<sup>6</sup> **Bernard STIRN**, « Ordre public et libertés publiques », Colloque sur l'ordre public, organisé par l'association française de philosophie du droit les 17 et 18 septembre 2015.

<sup>7</sup> **Bernard STIRN**, « Niveaux de protection des droit fondamentaux, Intervention présentée à la cour de justice l'union européenne de Luxembourg, le 05/11/2016.

<sup>8</sup> **Patrick WACHSMANN**, Libertés publiques, 6<sup>ème</sup> édition, Dalloz, Paris, 2009, p. 1.

<sup>9</sup> -« ....No one knows in France ce qui est véritablement « fondamental ».Or rather in each chapel in each current of thought , to almost each author has his vision of fundamentality ». **Laurence BURGORGUE-LARSEN**, « Les concepts de liberté publique et de droit fondamental », in L'influence du droit européen sur les catégories du droit public, sous Dir de Jean-Bernard AUBY, Dalloz, 2010, p.398.(389-407).

<sup>10</sup> -« The singular of the judge and the plural of freedoms call out and require clarification..... », **Jean Marc SAUVE**, « Le juge administratif protecteur des libertés, intervention lors du colloque organisé à l'université d'Auvergne le 16 juin 2016.

<sup>11</sup> -« No one has ever been able to define the meaning of public order, everyone praises its obscurity and everyone uses it », Malaurie, cité par **Jean Marc SAUVE**, « L'ordre public-Regard croisés du conseil d'Etat et de la cours de cassation, Cours de cassation, 24/02/2017.

<sup>12</sup> -See in this frame

- **Pierre-Laurent FERIAER, Jacques PETIT.**, op.cit, p.259

<sup>13</sup> Ethics and public morals have become major components of public order, which contradicts the opinion of jurist Hauriou that administrative control does not pursue the chaos of morals, as administrative control has become a legal guardian guarantor of morals and public morals..

<sup>14</sup> - **Manuel DELAMARRE, Timothée PARIS.**, op.cit, p.217.

<sup>15</sup> -« .....A mayor responsable for maintaing public order in his municipality, can therefore prohibit the presentation of a film on the territory .....of this one the presentation of a film the projection of wich is likely to cause serious disturbances or to be due to the immoral character of the said film detrimental to public order. » **CE**, section, Les films Lutétia, 18 décembre 1959, An°36385 36428, publié au recueil Lebon.

<sup>16</sup> - « ...That it emerges from this that safeguarding the dignity of the humen person against any form of enslavement and degradation is a principale with constitutional value », **Conseil Constitutionnel**, décision n°94-344DC du 27 juillet 1994, Loi relative au respect du corps humain, à l'assistance médicale à la procréation et au diagnostic prénatal, JORF n°174 du 29 juillet 1994.

<sup>17</sup> - « ...That respect for the dignity of the human person is one of the components of public order... ». **CE**, Assemblée, Commune Morsang- sur-orge, 27 octobre 1995, An°136727, inédit au recueil Lebon.



<sup>18</sup> -**Philippe COSSALTER**, La dignité humaine en droit public français : L'ultime recours, intervention à la 7eme conférence-débat du centre de droit public comparé, université Panthéon-Assas Paris\ . 30 C [www.revegenraledu.droit.eu / ? P= 18309](http://www.revegenraledu.droit.eu/?P=18309) , consulté le 08/06/2021.

<sup>19</sup> -**Marie Gautier**, « L'ordre public », in L'influence du droit européen sur les catégories du droit public., op.cit, p.318

<sup>20</sup> -In this regard, see :

- **Bernard STIRN**, « Ordre public et libertés publiques », Op.cit.

- Conseil Constitutionnel, Décision n°94-352 du 18 janvier1995, JORF n°18 du 21janvier1995.

<sup>21</sup> -In this regard, review :

- **Marie Gautier**, « L'ordre public », op.cit, pp.318.

-**CJCE23nov1999**, Arblade e. a., aff. jtes C-369et C-376/96.

-« The court considers first of all that the qualification of the Belgian laws in question as « police and safety laws » does not exempt them as such from compliance with Community law..... ».Communiqué de presse n°92/99, 23nov 1999, Arrêt de la CJCE dans les affaires C-369/96 et C-376/96, Arblade et Leloup .

-« ...Such a system would also undermine the effectiveness of the convention as a constitutional instrument of European public order... ». **CEDH**, gde ch., 23 mars 1995 , Loizidou c. Turquie, série A n°310.

<sup>22</sup> - **Romain DEMONGEON**., op.cit, p .13.

<sup>23</sup> In this regard, see:

- **M.CORNEILLE**, Concl sur Baldy du 10 août 1917.

- **CE**, 10/08/1917, Baldy, An 59855, publié au recueil Lebon.

<sup>24</sup> -**Claude-Albert COLLIARD**, **Roseline LETTERON**, Libertés publiques, 8 édition, Dalloz2005, pp. 362, 363.

<sup>25</sup> -**Guillaume RENAUDINEAU**« L'intérêt général », in L'influence du droit européen sur les catégories du droit public., op.cit, pp.303, 304, 305.(303-315).

<sup>26</sup> - **CE**, 09/11/2015, 10<sup>ème</sup> -9<sup>ème</sup> SSR, M.M'Bala, A précitée.

<sup>27</sup> - **Loi N 2000-597** du 30 juin2000 relative au référé devant les juridictions administratives, JORF n°151 du 1 juillet 2000.

<sup>28</sup> -**Christophe POULY**, Le juge des libertés, une garantie de façade, Plein droit 2012/3(n94), Pages 6-9.

<sup>29</sup> - It should be noted - in fairness to history - that the credit for laying the foundations for the French administrative judge's oversight of public liberties goes to the German judiciary, which is the first to establish its foundations in the Constitutional Court in "Karlsruhe", see in this context:- **Laurence BURGORGUE-LARSEN**., op.cit, p.392, 393. (389-407).

<sup>30</sup> -For the first time, the French legislator criminalized racial defamation of persons because of their affiliation to a particular ethnicity, nation or religion in 1881. See in this context:

-Article 29 de la loi du 29 juillet 1881 sur la liberté la presse, JORF n°40 du 30 juillet 1881.

<sup>31</sup> -**Loi du1 juillet 1972** relative à la lutte contre le racisme, JORF n°0154 du 2 juillet1972.

<sup>32</sup> -« Tout être humain, sans distinction de race, de religion ni de croyance, possède des droits inaliénables et sacrés ». **Préambule de la constitution de la I<sup>ère</sup> République Française**, JORF n°253 du 28 octobre1946.

<sup>33</sup> -**Loi 78-17 relative à l'informatique**, aux fichiers et aux libertés, JORF n°0006 du 7 janvier 1978.

<sup>34</sup> -**Loi n°82-689 du 4 aout 1982**, dite « loi Auroux » relative aux libertés des travailleurs dans l'entreprise, JORF n°0181 du 6 août 1982.

<sup>35</sup> -**Loi n°90-615 du 13 juillet 1990** tendant à réprimer tout acte raciste, antisémite, ou xénophobe dite loi « Gayssot », JORF n°0162 du 14 juillet 1990.

<sup>36</sup> -**Loi n°2003-88** du 03 février 2003 visant à aggraver les peines punissant les infractions à caractère raciste, antisémite ou xénophobe, JORF du 4 février 2003.

<sup>37</sup> - In this context, it is noted that 100/100 of the severe administrative seizure decisions regarding freedoms due to incitement to terrorism were issued in the face of Muslim persons of Moroccan origin - except in one case against a person of Chechen origin -.

<sup>38</sup> - « ...We see there the tangible mark of action of the association with a view to provoking acts of terrorism in France and abroad..... ».

<sup>39</sup> -Whereas, the governor issued a decision of administrative closure for a period of 6 months, based on Article 227-1 of the Internal Security Law, which gives the police governor the right to issue decisions to close places of worship. God Khomeini incites violence and hatred, and calls for the demise of Israel, which is what led the administrative judge to not accept her request to stop the implementation of the closure decision. See:

- **CE**, 22/11/2018, Centre Zahra France c/préfet du Nord, An°42511, inédit au recueil Lebon.

<sup>40</sup> - « .....We must not lose sight of the moral personality..... »

<sup>41</sup> - « It must exercise caution in the absence of a criminal conviction, by ensuring that the body of evidence testifying to acts in favor of terrorism is sufficiently dense « « », **Conclusions de Mme. Aurélie BRETONNEAU**, Association fraternité musulmane Sanabul, 26/01/2018, An°407220.

<sup>42</sup> -**CE**, 10/02/2016, M....A c/ministre de l'intérieur, An°396744, inédit au recueil Lebon.

<sup>43</sup> - **CE**, 15/05/2019, M.B A c/ Préfet de Maine-et Loire, An°427502, inédit au recueil Lebon.

<sup>44</sup> -**CE**, 13 novembre 2017, Société la Plume et M.D...M'A...M'A/commune de Marseille, A, n°415400, inédit au recueil Lebon.

<sup>45</sup> -**CE**, 1avril 2016, M.B.A, c/ ministre de l'intérieur, An°398181, inédit au recueil Lebon.

<sup>46</sup> -**CE**, 10 février 2016, M.A...C c/ministre de l'intérieur, An° 396742, inédit au recueil Lebon.

<sup>47</sup> -**CE**, 25 novembre 2020, Association Barakacity, An°445774, inédit au recueil Lebon.

<sup>48</sup> -**CE**, 22 novembre 2018, Centre Zahra France, An°425100, inédit au recueil Lebon.

<sup>49</sup> - **Jean Massot**, « Le juge administratif protecteur de la liberté individuelle », p p.1-11. Published on :C:/USER/user/Download/zb201701.00120(2).PDF

<sup>50</sup> - « .....It had become a place of polarization of the Salafist movement, which it thus represented by its operation and its frequentation a serious threat to security and public order.... ». **CE**, 20/01/2017, Centre culturel franco-égyptien- L'association Maison d'Egypte, An°406618, inédit au recueil Lebon.

<sup>51</sup> - **CE**, 06/12/2016, Association islamique Malik ibn Anas, An°405476, inédit au recueil Lebon.

<sup>52</sup> -Jean MASSOT, op.cit.

<sup>53</sup> - **Guillaume ODINET**, Le rôle du juge administratif dans le contrôle de l'état d'urgence, Revue les cahiers de la justice, n°2017/2 n (°2), p p.275-280.

<sup>54</sup> - « The judge leads the change», **Vedel GEORGE**, « Le droit administratif peut-il rester indéfiniment jurisprudentiel », **EDCE**, n°31, 1979, p.31.