

The Extension of the Scope of Public Order in Administrative Law: From Traditional Elements to Modern Approaches

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Abstract

This study examines the evolution of the concept of public order in administrative law, from its traditional elements of a material nature to its modern approaches of a moral and immaterial nature, based on jurisprudential, judicial and legislative analysis, with particular focus on the Algerian experience. The study concluded that the three traditional elements (public safety, public health, public tranquility) constituted the fundamental pillar of public order, but they are no longer sufficient to keep pace with societal development, which necessitated the extension of the concept to include modern approaches: moral (public morality and human dignity), economic (market regulation and competition protection), and aesthetic (preserving the beauty and splendor of cities). The judiciary, particularly the French Council of State, has played a prominent role in consolidating these approaches, as did the Algerian constitutional founder in the 2020 amendment. However, this extension has resulted in a significant expansion of the powers of administrative police authorities, necessitating the establishment of clear controls to protect these elements without undermining public freedoms. The study concludes with recommendations aimed at developing the legal framework for public order in Algeria.

Keywords: Public Order, Traditional Elements, Modern Approaches, Moral Public Order, Human Dignity, Economic Public Order, Aesthetic Public Order, Administrative Police.

Introduction:

Public order is considered one of the pivotal concepts in administrative law, representing the noble objective that administrative police authorities seek to achieve by intervening to regulate public liberties and restrict them to the extent necessary to preserve the cohesion and stability of society.

However, despite its central position, this concept has remained characterized by ambiguity and relativity, rendering its content adaptable and subject to expansion in response to the changing political, economic, social, and cultural circumstances surrounding both the state and society.

Under the traditional concept, legal scholarship and jurisprudence converged on limiting public order to three primary physical elements: public safety, public health, and public tranquility. Since the inception of the modern state, these three elements have constituted the legitimate

justification for administrative intervention in restricting individual liberties—under the banner of "administrative police"—with the aim of maintaining the physical order of society and averting anything likely to cause chaos or disturbances that threaten state stability.

Nevertheless, the profound transformations experienced by the contemporary state—particularly with the evolution of its role from a mere "night-watchman state" to an "intervening and regulatory state"—coupled with the evolution of human needs and the diversification of social demands, necessitated a reexamination of this traditional concept. Public order is no longer regarded as merely a state of physical absence of chaos or disturbance; rather, it has become a dynamic concept capable of absorbing new values and principles that reflect the moral and spiritual dimension of society, while responding to individuals' aspirations to live with dignity in a healthy and balanced environment.

This extension of content has clearly manifested in the emergence of modern approaches to public order, most notably:

- **The Moral Approach:** Which introduced non-physical elements, such as public morals and respect for human dignity, into the sphere of administrative police protection. This approach was cemented by landmark judicial precedents, such as the dwarf-tossing case before the French Council of State (*Conseil d'État*), and affirmed by the Algerian Supreme Court on numerous occasions.
- **The Economic Approach:** Which established market regulation and the protection of competition as a new objective of public order, reflecting the state's transition from an active economic participant to a regulatory entity tasked with combating monopolies and anti-competitive practices through independent bodies, such as the Competition Council.
- **The Aesthetic (Urban) Approach:** Which conferred the status of public interest upon the aesthetic beauty and visual harmony of cities. Consequently, administrative police authorities gained the right to intervene to prevent anything that disfigures the public landscape or causes visual pollution, utilizing urban planning and construction control mechanisms such as building, demolition, and land-subdivision permits.

Accordingly, while this expansion in the scope of public order reflects a positive evolution in the concept and functions of the state, it simultaneously raises fundamental dilemmas regarding the boundaries of administrative powers and their balance with constitutionally guaranteed fundamental rights and freedoms. This is especially true given that incorporating new elements inherently entails an expansion of administrative police powers. This requires both the legislature and the judiciary to establish clear safeguards that ensure the protection of these modern elements without impairing the essence of public liberties.

Based on the foregoing, the primary research problem addressed in this article is formulated in the following question:

How has the scope of public order in administrative law extended from traditional physical elements to modern approaches (moral, economic, and aesthetic), and what are the implications of this expansion on the powers and limits of administrative police authorities in light of the balance with rights and freedoms?

To address this problem, the first section will examine the traditional elements of public order (safety, health, tranquility) and their associated protection mechanisms. The second section will then proceed to analyze the modern approaches (moral, economic, aesthetic).

Keywords:

Public Order, Traditional Elements, Modern Approaches, Moral Public Order, Human Dignity, Economic Public Order, Aesthetic Public Order, Administrative Police.

Section One: Traditional Elements of Public Order (Physical Content)

Legal scholarship and jurisprudence have established that public order, in its classical concept, rests upon three fundamental physical elements known as the "traditional triad": public safety, public health, and public tranquility. Since the emergence of the modern state, these elements have constituted the legitimate justification for the intervention of administrative police authorities in restricting individual liberties, aiming to maintain the physical order of society and avert any potential chaos or disturbances that could threaten state stability.¹

This section examines these traditional elements in accordance with established administrative jurisprudence and comparative case law.

Subsection One: Public Safety as a Cornerstone of Public Order

Public safety is regarded as the primary and most paramount element among the traditional components of public order, serving as the essential guarantee for societal stability and enabling individuals to exercise their rights and liberties in a climate of peace and security. It is not limited to physical aspects alone, but extends to encompass the psychological sense of security and reassurance.

Paragraph I: The Concept of Public Safety and Its Relation to Public Liberties and Administrative Police

Administrative legal scholarship defines public safety as "an individual's state of security regarding their person and property against the threat of aggression, whether originating from natural causes—such as floods, earthquakes, fires, and building collapses—or from human actions, such as criminal assaults and traffic accidents, or from dangerous animals and the disturbances they cause"².

¹ Habib Ibrahim Hamada Al-Dulaimi, *Limits of Administrative Police Authority under Normal Circumstances (A Comparative Study)*, 1st ed., Halabi Legal Publications, Beirut-Lebanon, 2010, p. 992.

² Majid Ragheb Al-Helw, *Administrative Law*, University Publishing House, Alexandria-Egypt, 2000, p. 411.

It is also defined as "the achievement of stability and order, and the protection of citizens in their persons and property against the risks of crimes and assaults, as well as protecting them against disaster hazards."

Consequent to this concept, administrative police authorities possess the right to take a range of preventive and corrective measures, including: prohibiting dangerous gatherings on public roads, regulating demonstrations and processions, setting maximum speed limits on roads, regulating parking rights, conducting patrols to enforce traffic violations, and evacuating dilapidated buildings prone to collapse.

The complementary relationship between public safety and public liberties is highlighted by the interplay between an individual's right to enjoy constitutionally guaranteed liberties and the state's right to maintain public safety within society. While freedom is the general rule, the imperatives of public safety may necessitate restricting the exercise of certain liberties to the extent necessary. For instance, the right to establish political parties cannot be invoked to compromise national security and territorial integrity, nor can the right to strike be exercised without restrictions in domains concerning national defense and security.³

Regarding the relationship between public safety and administrative police, it manifests in the administrative police serving as the legal instrument through which the state executes its duty to preserve public safety. Administrative police is "an activity undertaken by the administration to achieve public order by issuing orders and decisions aimed at preventing anything likely to breach public safety and tranquility, or working to restore order to its normal state whenever a disruption occurs."

It is inconceivable for an existing state to exercise sovereignty over its territory and regulate the conduct of its individuals without resorting to administrative police procedures and methods to enforce a specific order and guarantee a minimum level of stability ⁴.

Paragraph II: The Constitutional Enshrining of Public Safety Under Normal and Exceptional Circumstances

The Algerian constitutional framer accorded special attention to the concept of public safety, affirming the state's responsibility to preserve it across numerous articles and sections of successive constitutions, regardless of the differing ideological orientations of each constitution. Preserving state institutions and protecting individual security against all threats or dangers has consistently maintained a paramount status as a constitutional obligation ⁵.

³ Khaled Rochou, "The Balance Between Exercising Public Liberties and the Approach to Maintaining Public Order (Algerian Constitution 2016 as a Model)," *Professor Researcher Journal for Legal and Political Studies*, Mohamed Boudiaf University-M'Sila, Vol. 04, No. 09, June 2019, p. 191.

⁴ Ali Dilshad Maarouf, *Judicial Review over the Legality of Administrative Police Decisions*, 1st ed., Al-Wafa Legal Library, Alexandria-Egypt, 2016, p. 99.

⁵ Hakim Tebbina, *The Concept of Public Order in the Algerian Constitutional System*, Doctoral Dissertation, Faculty of Law and Political Science, Mohamed Lamine Debaghine University-Setif 2, 2021, pp. 24–30.

Under normal circumstances, public safety serves as a primary standard for restricting the exercise of rights and liberties. This is reflected in constitutional provisions that cite public safety as a justification for limiting certain rights, such as the right to form political parties, the freedom to transmit and circulate information, and the right to bodily integrity. Article 37 of the 1996 Constitution stipulated that "freedom of commerce and industry is guaranteed and exercised within the framework of the law", implying that the exercise of this freedom is subject to statutory limitations, including those pertaining to public safety.

Under exceptional circumstances, the Algerian constitutional framer organized various applications of the theory of exceptional circumstances to which the state might be exposed, defining states of emergency, state of siege, state of exception, and state of war, while delineating powers among different authorities and setting constitutional parameters governing each case. Algeria experienced the actual application of a state of emergency under Presidential Decree No. 92/44 of February 9, 1992, which persisted for many years, as well as a state of siege under Presidential Decree No. 91/196 of June 4, 1991.

In this context, public safety assumes a broader concept and distinct dimensions, grants competent authorities expanded powers to adopt measures necessary for protecting citizens' lives and property and safeguarding national territorial integrity within a framework of special legality. Under this framework, authorities adhere to prescribed constitutional and statutory controls while having the latitude to derogate from ordinary legality and restrict individuals' fundamental rights and liberties guaranteed by the constitution to restore public safety ⁶.

Subsection Two: Public Health and Public Tranquility

Public health and public tranquility constitute the remaining two pillars of the classical triad of public order. These two elements are intrinsically linked to individuals' quality of life and societal stability, requiring administrative police intervention to ensure a healthy and safe environment free from disease vectors and disturbances.

Paragraph I: The Scope of Public Health and Statutory Protection Mechanisms

Public health is defined as "preventing diseases, curbing the spread of epidemics and infectious diseases that easily transmit from place to place, and adopting preventive measures such as mandatory vaccination, exterminating disease-carrying vectors, preventing drinking water contamination, inspecting food and public establishments, and cleaning roads and public places, among other measures that ensure society's protection from health hazards."

While definitions of public health have varied, the World Health Organization provided a more comprehensive definition in its Constitution, defining health as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity." This definition

⁶ Messaoud Chihoub, "Judicial Protection of Fundamental Liberties under Exceptional Circumstances," *Algerian Journal of Legal, Economic and Political Sciences*, Institute of Law and Administrative Sciences, Ben Aknoun University-Algerias, Vol. 04, No. 06, 1992, p. 12.

transcends the negative concept of health (absence of disease) to embrace a positive concept encompassing physical, mental, and social well-being.

The importance of public health in the modern era is underscored by its emergence as a global concern, driven by high population density, increased social interaction, crowded streets and public spaces, the resulting ease of contagion transmission, and elevated air pollution levels from vehicle exhaust and industrial emissions. Furthermore, industrial advancement has given rise to novel diseases. Mechanisms for protecting public health in Algerian legislation are multifaceted, with jurisdiction distributed between central and local authorities.

At the local level, the Wilaya Governor (*Wali*) exercises broad powers in public health protection, bearing responsibility for maintaining public order, safety, security, and tranquility.

Similarly, the President of the Communal People's Assembly (*PAPC*) plays a pivotal role in protecting public health at the municipal level, adopting necessary preventive procedures and measures to guarantee individual safety and protection, combating and preventing transmissible or infectious diseases, controlling stray animals, inspecting consumer food items offered for sale, and enforcing environmental sanitation directives.

Paragraph II: Public Tranquility and Combating Causes of Disruption

Public tranquility represents the third element of traditional public order, defined as "providing the maximum degree of quiet and stillness on public roads and spaces, and ensuring peace by eliminating sources of noise, nuisance, and disturbing loud sounds"⁷ It embodies an individual's right to live in a clean and peaceful environment, thereby fostering well-being and enhancing productive capacity.

Disruptions to public tranquility take various forms, most notably noise pollution, which constitutes the primary threat to public quiet.⁸

Sources of noise vary between major sources—such as land, air, and maritime transport, alongside industrial activities—and secondary sources, including domestic noise and loudspeakers.

The Algerian legislator has enacted several preventive mechanisms to address these disruptions, including: prohibition systems (such as banning the use of car horns in residential areas at night except in cases of imminent danger, and banning motor vehicle and motorcycle repairs in public places); licensing systems (such as subjecting classified establishments that may harm public tranquility to licensing regimes, and requiring prior permits for installing or operating temporary or permanent sound devices); notification systems; and mandatory requirement systems (such as obligating establishment owners to install noise-reduction equipment).

⁷ Dawood Abdul-Razzaq Al-Baz, *Protecting Public Tranquility (Addressing the Issue of the Era in France and Egypt): Noise (A Comparative Foundational Study in Administrative Environmental Law and Islamic Sharia)*, University Thought House, Alexandria-Egypt, 2003, p. 849.

⁸ Saja Muhammad Abbas, *Noise Pollution (A Comparative Study)*, 1st ed., Arab Center for Scientific Studies and Research for Publishing and Distribution, Cairo-Egypt, 2018, p. 15.

Additionally, the legislator established deterrent mechanisms to safeguard public tranquility, including the temporary closure of offending facilities, license revocation, and monetary fines whose values vary according to the severity of damage and its negative impact on individuals' comfort and peace. These mechanisms are embedded in environmental protection laws within sustainable development frameworks, road traffic safety laws, executive decrees regulating noise emissions, and other legislative and regulatory texts forming an integrated legal system for protecting public tranquility.

Subsection Two: Economic and Aesthetic Public Order

Alongside the moral approach, the concept of public order has witnessed another expansion to incorporate two modern approaches: the economic approach, aimed at regulating the market and protecting competition, and the aesthetic approach, aimed at preserving the urban charm and visual beauty of cities. These two approaches reflect a profound shift in the role of the state, evolving from a mere guardian of general order to a regulator of various economic and urban facets of life.

Paragraph I: Economic Public Order and the Role of the State in Market Regulation and Competition Protection

Economic public order stands as one of the most significant modern approaches reflecting the transformation of the state's role from a direct intervener in economic activity into a regulator and supervisor of the market. This concept is intrinsically linked to the adoption of a market economy system and the liberalization of economic activity, which necessitated establishing legal mechanisms to regulate the market and protect competition against restrictive practices—such as anti-competitive agreements, abuse of dominant position, monopolies, and predatory pricing.

Economic public order has been defined in various ways. It is defined as "that order which aims to satisfy essential or urgent needs, the non-fulfillment of which gives rise to specific disruptions no less dangerous than external threats. This expansion of the public order concept relates to a set of economic goals tied to compulsory price controls, supplying basic food items, and regulating export and import operations."

It is also defined as "the set of values to which market actors must conform; it constitutes a body of mandatory behaviors to be adhered to and respected, applying to all market actors to ensure the protection of weaker parties".⁹

Economic public order possesses several distinct characteristics separating it from other elements of public order. It is a positive rather than a purely negative order; it does not merely designate prohibited conduct that parties must avoid, but rather establishes rules detailing proper conduct that individuals must actively follow, imposing compliance to achieve both individual and

⁹ Mohamed Souilem, *Administrative Authority in Protecting Economic Public Order*, Doctoral Dissertation, Faculty of Law and Political Science, University of Ghardaia, 2017/2018, p. 41.

collective interests¹⁰. Furthermore, it is a relative, dynamic, and evolving order, influenced by surrounding circumstances, changing as they change, and advancing alongside surrounding economic and social conditions.

The Algerian constitutional framer constitutionalized this concept within the 2020 constitutional amendment by enshrining the freedom of trade, investment, and entrepreneurship, alongside state intervention to regulate the market and protect the principle of competition. This aligns with the state's general policy to encourage individual economic initiative, liberalize activity, and foster competitive freedom within the parameters of economic public order.

To give effect to these principles, several independent regulatory authorities were established in the economic sphere, most notably the Competition Council. As the primary administrative police authority in the economic realm, it is tasked with promoting and protecting competition while countering restrictive practices.

The Competition Council exercises several regulatory powers enabling it to fulfill its mandate, including: examining restrictive competitive practices and imposing appropriate sanctions (financial fines reaching up to 10% of turnover, or a fine equal to at least double the profit realized through these practices); monitoring economic concentrations and their impact on free competition, where any concentration liable to harm competition is subject to prior approval by the Competition Council. Additionally, the Competition Council may issue injunctions aimed at terminating identified anti-competitive practices, and may impose periodic penalty payments (*astreintes*) in cases of non-compliance with these orders.

The efficacy of the Competition Council is evidenced by the wide range of entities entitled to refer matters to it, including the Minister responsible for Trade, local authorities, economic and financial bodies, trade and professional associations, trade unions, and consumer protection associations. It may also initiate proceedings on its own motion (*ex officio*). Following an investigation into restrictive practices, the Competition Council issues reasoned decisions, which are served upon the parties concerned and transmitted to the Minister responsible for Trade for enforcement.

Paragraph II: Aesthetic Public Order and Mechanisms for Preserving Urban Aesthetics

Aesthetic public order (often referred to as the preservation of scenic beauty and visual harmony) represents one of the newest approaches to public order. It reflects state concern for urban beauty and architectural harmony as fundamental elements for achieving individuals' psychological well-being and as a measure of societal progress and refinement. Indeed, problems stemming from the disfigurement of urban aesthetic appearance due to building code violations

¹⁰ Abdelnacer Belmioub, "Public Order in Private Law (A Changing and Evolving Concept)," paper presented at the International Conference on *The Transformation in the Concept of Public Order: From Public Order to Public Orders*, Faculty of Law and Political Science, Abderrahmane Mira University of Bejaia, May 12–13, 2014, p. 24.

have come to pose a threat to public order, necessitating statutory intervention to curb disruptions affecting aesthetic public order.

Aesthetic public order is defined as "the concern for the beauty, elegance, and splendor of streets and public amenities so as to foster tranquility and psychological comfort, whether by embellishing streets or establishing specific building specifications that ensure a harmonious urban and street landscape"¹¹.

Legal scholars have debated the inclusion of this element within public order; one school of thought considers preserving scenic beauty an independent element of public order, whereas another requires it to be linked with one of the traditional public order elements.

Jurisprudence has contributed significantly to enshrining this concept. Whereas the French Council of State (*Conseil d'État*) previously required an explicit statutory provision to recognize the right of administrative police authorities to intervene for preserving aesthetic public order, it reversed its stance in 1906 in the landmark *Syndicat des propriétaires de la région parisienne* ruling, recognizing the protection of scenic beauty as a valid objective of administrative police powers¹².

At the legislative level, the Algerian constitutional framer enshrined this concept by constitutionalizing the right to a healthy environment.

Mechanisms for protecting aesthetic public order in Algerian legislation are varied, primarily represented by urban permits—one of the most important administrative police instruments for regulating individual activity in construction and urban planning. These permits include: the building permit, required for constructing new buildings or extending or altering existing structures; the subdivision permit, governing any division of real property into two or more lots intended for building; and the demolition permit, required for the total or partial demolition of buildings, particularly those located in designated or protected zones.

In addition to these permits, several urban planning certificates were created to reinforce oversight of development and urban planning operations, including: the urban planning certificate, an informational document detailing an individual's building rights and land easements; the certificate of conformity, attesting that completed works comply with building permit specifications; and the division certificate, outlining conditions for dividing a developed real property into two or more portions.

The Algerian legislator accorded special attention to aesthetic considerations within these mechanisms. The practical effectiveness of these instruments is reflected in judicial rulings; the Algerian Supreme Court held that a decision refusing a building permit is lawful if the nature,

¹¹ Habib Ibrahim Hamada Al-Dulaimi, *Limits of Administrative Police Authority under Normal Circumstances (A Comparative Study)*, 1st ed., Halabi Legal Publications, Beirut-Lebanon, 2010, p. 6.

¹² Essam Al-Dabs, *Administrative Judiciary and Its Review over Administrative Acts (A Comparative Study)*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman-Jordan, 2016, p. 105.

location, or dimensions of the proposed buildings would impair the aesthetic harmony of surrounding structures, which represents the modern dimension of public order¹³.

Conclusion

The concept of public order represents a fundamental cornerstone of administrative law, constituting the noble objective that administrative police authorities endeavor to achieve through their intervention to regulate public liberties and restrict them to the extent strictly necessary to preserve societal cohesion and stability. However, despite its central importance, this concept has remained characterized by ambiguity and relativity, rendering its content adaptable and subject to evolution and expansion in accordance with changing political, economic, social, and cultural circumstances affecting both the state and society. Consequent to this study, we have arrived at a set of findings and recommendations summarized as follows:

First: Findings

1. **Foundation of Public Order:** The three traditional elements (public safety, public health, and public tranquility) have formed the foundational bedrock of the public order concept. They have historically constituted the legitimate justification for administrative police intervention to restrict individual liberties in order to preserve society's physical order.
2. **Constitutional Framing of Safety:** The Algerian constitutional framer affirmed the state's responsibility to preserve public safety as a primary standard for restricting rights and freedoms. Furthermore, the framer regulated the applications of the theory of exceptional circumstances (state of emergency, state of siege, state of exception, and state of war) under explicit constitutional controls; nevertheless, the emergency law remained in force for more than three decades.
3. **Modern Expansion:** The scope of public order extended to incorporate modern approaches: moral (public morals and human dignity), economic (market regulation and competition protection), and aesthetic (preserving urban beauty). Jurisprudence—particularly the French Council of State (*Conseil d'État*)—played a pivotal role in enshrining these approaches through landmark rulings.
4. **Constitutionalization of Modern Approaches:** The Algerian constitutional framer embedded these modern approaches by constitutionalizing the right to a healthy environment, the protection of cultural heritage, and the freedom of trade and investment, while explicitly prohibiting infringements upon human dignity and emphasizing respect for the religious, moral, and cultural values of society. Independent regulatory authorities were also created, most notably the Competition Council.
5. **Implementation Gap:** Although the Algerian legislator established multifaceted mechanisms to safeguard both traditional and modern elements of public order, practical

¹³ Kamal Mohamed Al-Amin, *Administrative Police in the Urban Sector (A Comparative Study)*, 1st ed., Dar Al-Ayyam for Publishing and Distribution, Amman-Jordan, 2019, p. 20.

application reveals significant shortcomings. This is evident in public health (failure to activate statutory bodies and committees), public tranquility (widespread disregard and indifference among individuals and institutions), and aesthetic public order (urban chaos and planning dysfunctions).

Second: Recommendations

1. **Enacting Organic Laws for Exceptional States:** Expedite the promulgation of the organic law governing states of emergency and siege—pursuant to the 2020 constitutional amendment—to precisely define mandatory conditions and procedures while guaranteeing the protection of rights and liberties during exceptional circumstances.
2. **Activating Public Health Legislation:** Review public health legislation and activate its provisions, specifically concerning the establishment and operation of statutory bodies and committees, to achieve set public health protection objectives and improve healthcare services provided to citizens.
3. **Promulgating Specific Legislation for Public Tranquility:** Enact dedicated legislation to protect public tranquility that explicitly defines causes of disruption and establishes preventive and deterrent mechanisms to curb them, while instituting maximum permissible noise levels across various sectors and enforcing strict oversight.
4. **Completing the Aesthetic Public Order Framework:** Complete the legislative framework for aesthetic public order by unifying urban aesthetic standards across Algerian cities, enhancing monitoring mechanisms over building and urban planning operations, and stiffening penalties against violators.

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