THE DEFECT OF LACK OF ADMINISTRATIVE COMPETENCE IN THE LIGHT OF COVID-19 PANDEMIC

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INTRODUCTION

The research was divided into two sections as follows:

The first topic: What are the emergency conditions and their impact on the principle of legality, and it is divided into two demands as follows:

The first requirement: Defining the theory of emergency conditions and applying it to the Covid-19 pandemic

The second requirement: the effect of applying defense orders on the principle of legality.

The second topic: the state of emergency and its impact on the administrative decision, and it is divided into two demands as follows:

The first requirement: What is the state of emergency?

The second requirement: the relationship between specialization and the theory of exceptional circumstances.

The first topic: What are the emergency conditions and their impact on the principle of legality?

The First Requirement: Defining the theory of Exceptional Circumstances and Applying it to the Covid-19 Pandemic.

The theory of emergency conditions is one of the historical theories that existed from ancient times, and therefore it has become, with the passage of time, an integrated theory of construction. Therefore, it is necessary to define the concept of this theory, so that we can distinguish between it and other theories that are similar to it in some features. [1]

Also, by defining this concept of that theory and distinguishing it from others, we can also determine the scope of its application in terms of contracts whose parties can resort to the theory of emergency circumstances in order to modify the contract in a reasonable manner without other contracts [2]. There are also contracts that the legislator stipulates emergency conditions of their own, and therefore they deviate from the framework of the general theory of emergency conditions[3].

Section one: Defining the theory of emergency conditions

Defining the definition or concept of the theory of emergency conditions has a major role in falling on the dimensions and conditions of this theory and distinguishing it from other legal systems that are close to it. Therefore, we will discuss the definition of this theory, whether linguistically or idiomatically, as follows:

First: the linguistic definition of emergency conditions:

The term emergency conditions consists of two words, the word “conditions” and the word “emergency.”

Each word separately has a different connotation, due to the different linguistic origin, and we deal with the linguistic meaning of these two words as follows:

A) Adverbs: This word goes back to its linguistic origin, an adverb and its plural adverbs, and it has multiple meanings in the language, including:

1. Container: including the adverbs of time and place according to the grammarians[4] , and the adverb of a thing as its container[5] .
2. Dexterity, intelligence of the heart, good speech, appearance, and cleverness in something [6] .

B) Emergency: This word denotes its etymological origin, it means what happened and came out suddenly, and it is said that it happened to the people, i.e. it came to them from a far place suddenly. It is also said to stranger's emergency, and emergency is a feminine word for the word emergency, and emergency means shrewd [7].

Second: the terminological definition of the theory of emergency conditions

The Western position did not set a definition in jurisprudence or legislation for emergency conditions, but was satisfied with placing it .Some practical examples of these conditions, such as war, epidemic, and total destruction of the crop, or other natural calamities [8].

As for Arab legislation, such as the Egyptian legislation, which had the preference in the art of drafting legislation in this regard, where the Egyptian Civil Code No. 131 of 1948 stipulated that[9] "The contract is the law of the contracting parties. It may not be rescinded or amended except with the agreement of the two parties, or for reasons determined by it."

Nevertheless, if exceptional, general events occur that it was not possible to foresee and result in it not becoming impossible, it becomes burdensome for the debtor so that it threatens him with their occurrence that the implementation of the contractual obligation, and with a heavy loss, the judge may, according to the circumstances and after balancing the interests of the two parties, dismiss the obligation as void every agreement on Unless it is stressful to a reasonable extent

Many Arab legislations have followed this, such as the Jordanian Civil Law No. 11 of 1976, which stipulates that "if exceptional public incidents occur that could not have been foreseen if it had not become impossible, it became burdensome for the debtor and its occurrence resulted in the implementation of the contractual obligation and so that it threatens him with a heavy loss." The court may, according to the circumstances and after balancing the interests of the two parties, reduce the burdensome obligation to a reasonable extent if justice so requires, any agreement to the contrary will be null and void"[10].

Therefore, Arab legislation is better than other Western legislation for setting it as an officer of guidance without providing practical examples, because the types of emergency circumstances that fall under an inventory and this must leave the matter of enumerating them and determining their identity and making divisions for them to jurisprudence and the judiciary[11].

The ancient jurists did not care to put the term "emergency circumstances" naked, as the use of this term was not common among them. This is according to the contemporary jurisprudence that came with this term regarding the statement of unexpected cases that occur in the contract after its conclusion, and these are some of the legal definitions of this term

Some legal jurists defined emergency conditions as "every general accident that has the right to form a contract, and that is not expected to occur during the contract, resulting in a clear imbalance in the benefits generated by a contract whose implementation is delayed for a term or periods, so that the debtor's implementation of his obligation as the contract enjoins him burdens and threatens him." With a flagrant loss that goes beyond the usual limit in the loss of traders, such as a severe exhaustion of a commodity that the debtor has pledged to supply from the price, and an unexpected, outrageous rise in its price" [12].

It was also said that it is "a general unfamiliar or abnormal situation, or a general material fact that was not taken into account by the contracting parties at the time of the contract and they were not in a position to arrange its occurrence after the contract, and if it did not become necessary, the implementation of the contractual obligation would be stressful for the debtor so as to threaten him with heavy loss and impossible [13].

And some other jurisprudence defined it as "those incidents that do not lead to making the implementation of the debtor's obligation impossible because if it became impossible, the obligation would have expired and the contract would be voided and there was no room for its amendment[14].

Some believe that emergency circumstances are "the circumstances that make the implementation of the obligation burdensome to the debtor, threatening him with heavy loss, with the possibility of implementation despite the fatigue, provided that the result of the accident is not the termination of the obligation, but rather the obligation to return it to a reasonable extent[15].

The second section: Conditions for applying the theory of emergency conditions in the Covid-19 pandemic

In view of the fact that the theory of emergency conditions is an exception to its general seats to the complex of the law of contracting parties, with conditions starting from being available, so that the judge can apply it, and we will address it in the following demands:

First: That the emergency circumstance be general and unexpected: it means that the circumstance be general, that is, that it does not affect the contracting person individually, such as bankruptcy, death or disease, but it is required that the event be described as general, that it be inclusive of a group of people. This condition came in Article (103/3) of the Law The Egyptian civil authority stated that if exceptional, general incidents occurred, it was not possible to foresee it, and their occurrence resulted in the implementation of the contractual obligation, even if it did not become impossible and became burdensome. The Supreme Administrative Court in Egypt ruled that "… it is required to apply the theory of emergency conditions that during the period of implementation of the administrative contract accidents, natural or economic conditions, or circumstances arising from the work of a non-contracting administrative body, or a circumstance from the work of another person."[16].

It is noted that some legislations (such as the Egyptian and Jordanian Civil Code) stipulated that it be general in the emergency circumstance, while there are other laws such as the Italian law that do not require this characteristic in the emergency circumstance. As for Iraq, the Court of Cassation confirmed in its ruling issued on 3/3/1986 that it is required to apply the theory to emergency circumstances that the circumstance be general and not specific, and in general, we find that the Iraqi judiciary may consider what comes from emergency conditions, the occurrence of a flood of heavy rain and water scarcity The Euphrates, the spread of epidemics and diseases and the breaking of dams, the rise in the prices of raw materials and construction, the prevention of import, and the prevention of supply, the issuance of new legislation such as the issuance of the Agrarian Reform Law[19].

Third: That the emergency circumstance is during the implementation of the contract and the contractor has no involvement in its occurrence: it is required to apply the theory of emergency conditions that the exceptional circumstance occurs before the completion of the contract and during its implementation. Hence, the accident that occurs before the conclusion of the contract is not considered an emergency where the contractor can refrain from concluding the contract[20]. If the contracting party accepts the conclusion of the contract with the presence of this circumstance, it is not an emergency, and then this theory is not applied.

Also, it is not considered an emergency circumstance that occurs after the expiry of the contract implementation, as the complete implementation of the contract leads to the end of obligations, but if the period of contract implementation extends to a period Longer than agreed upon in the contract. This extension was for a reason due to the administration. In this case, the contractor has the right to compensate for the emergency circumstances that occurred after the end of the period specified for the implementation, due to the failure to complete the implementation of the matter beyond the contractor's control. Fourth: Injuring the contracting party with a heavy loss. Volatility of the economics of the contract: With the availability of the previous conditions, a contracting party has no right to demand the application of the theory of emergency conditions unless the occurrence of emergency circumstances would make the implementation of the obligation very stressful for a contracting party, leading to the upside down of the economics of the contract[21].

This condition is fulfilled if the damage inflicted on the contracting party is reasonable and it is not sufficient to lose its meaning to avoid quantitative or partial profits, but at the same

time it is sufficient to make the obligation difficult to implement without the impossibility of its implementation, because in the event of the impossibility of implementation, we are in connection with the force majeure theory. , but the heart of the economics of the contract is a relative idea, estimated in each case according to the circumstances of each contract separately, and the French Council of State takes into account multiple considerations, such as the contracting company's business number, the amount of reserves, and the liquidity of my obtaining the funds necessary to practice my activities..etc.

The Second Requirement

The effect of applying defense orders on the principle of legality:

When the conditions for applying the theory of emergency conditions (the Corona pandemic) meet, the contractor has the right to request a financial rebalancing of the contract, and as we noted previously with regard to the principle (continuity of the public facility)

As a legal basis for applying the theory of emergency conditions, the contractor remains obligated to carry out the administrative contract in a continuous manner despite its difficult condition during unusual circumstances. However, in return, he shall have the right to partial compensation for the losses he incurred as a result of these circumstances. In the event that the contractor stops the implementation, the administrative judiciary refuses any compensation for him, and this means that the contractor is not compensated for the difficulties that occurred as a result of his act[22]. In addition, we can say that the unexpected difficulties resulting from the management's action in this case should not be applied. The theory (the act of the prince) as a basis for compensating the contractor in the event of meeting terms of application[23].

The contracting party, who suffered a heavy loss as a result of the unexpected emergency circumstances, in which his management is not involved, is obligated to continue to implement his contractual obligations. Therefore, he is not exempted from carrying out his obligations, because the emergency circumstance does not make the implementation of the deal impossible, but the obligation remains possible even if it was promoted by the contractor [24].

But if the contractor stops implementing the contract in the event that the conditions of emergency circumstances are met, this is a contractual error that gives the management the right to impose appropriate penalties on the contractor in addition to

Therefore, his abstention reduces the percentage of compensation that can be obtained. It is worth noting that the penalty is mostly limited to the imposition of delay fines on the contractor, without the matter coming to abstaining from applying the theory of emergency conditions as part of the non-continuation of the implementation of the deal. In the case of the impossibility of ending the emergency circumstance, the main purpose of approving the theory of emergency conditions is the attempt of the contractor with the management authority to overcome the temporary exceptional circumstances in order to continue implementing the contract, but although it is supposed to enable temporary conditions, Sometimes the emergency circumstance turns at a stage where he does not have the right to a force majeure that is impossible to continue implementing the deal, as it is impossible with the financial rebalancing of the deal, so that the contracting party cannot continue to implement his contractual obligations except by trying to manage it permanently. In such a case, the parties to the contract have the right to ask the judge terminates the contract if the two parties fail to reconsider the terms of the contract by reaching an agreement that restores life to a complex. The administrative contract is only one of the means of management to ensure the regular and steady functioning of public utilities[25].

The financial rebalancing of a complex is the state of justice agreed to by the two parties to the contract, which means that any imbalance in this contract leads to the administration's commitment to compensate the contractor, meaning that it is one of his rights, either based on the contract texts or based on the law or the theories adopted in the management of the public utility. The financial balance of a complex is disturbed due to the management's modification of

it, or because of one of the procedures that worsen the position of the contracting party (the act of the Emir), or because of natural conditions (emergency conditions)[27], or material conditions of unexpected material difficulties, or because of the contractor's actions that impoverish him and enrich the administration. The theory of the contract is generally characterized by the fact that it expresses mutual rights and obligations between two parties, where each party tries to obtain at the stage of concluding the contract the largest amount of rights, and bears the least amount of obligations, until it reaches a consensual formula that satisfies all parties, and then the contract is concluded in light of this balance, which expresses the Sharia that the parties to the contract accepted[27].

As for Iraq, we have not returned to the text of Article (916) of the Iraqi Civil Code, which came as follows. If the contract was executed, it was binding, and no one of the contracting parties may retract or reinforce, except by virtue of a provision in the law or by mutual consent. Provided that if exceptional, general incidents occurred, it was not It is possible to foresee and as a result of its occurrence that the implementation of the contractual obligation, even if it does not become impossible, becomes burdensome for the debtor so as to waste it with a heavy loss. A court may, after balancing the interests of the two parties, reduce the burdensome obligation to a reasonable extent if justice so requires and every agreement on the contrary is void. It is noted in the second paragraph of the aforementioned article of the Iraqi Civil Code that it is a general paragraph that can apply to all contracts, whether civil or administrative, with evidence that the legislator has included a provision within the general provisions of the contract theory. Also, the legislator was considered part of the public order to indicate their taboo every agreement that violates the provisions of the two texts, to the public position. The Iraqi legislator included a text specializing the application of this theory to the contracting contract, as Article (878) stipulates an Iraqi civil, which authorized a contractor if the complex economic balance collapses. Completely due to accidents that were not taken into account at the time of contracting and thus the basis for the financial assessment of the contracting contract has been lost, a court may order an increase in the rent or termination of the contract. Among the applications of this theory also in the civil law is the provision on the insolvent debtor's miles or what is known as (the easy look[28]), mentioned in the text of Article (394) of the Iraqi Civil Code,

Many countries have stipulated this theory in civil laws[29] , and we have a question, to what extent can the Corona virus be a legal impediment to the implementation of the legal obligations arising from the parties to the contract? It is not permissible for one of the contracting parties to retract or cancel it except in two cases, namely the existence of a provision in the law or by agreement between the two parties Article (146). As for the second paragraph, it can be applied to the Corona virus, according to the following:

The Corona virus is one of the exceptional and unexpected public accidents when concluding contracts, so the contractors did not take into account the circumstances of this virus when concluding contracts.

- This deadly virus cannot be paid by a reasonable effort; it has caused the death of many people without the doctors being able to pay except for a few cases.

The Corona virus made the implementation of the contractual obligation burdensome on the debtor, not impossible if we made it an emergency circumstance, while if we made a force majeure, it would make the implementation of the contractual obligation responsive, thus the debtor's obligation will expire by the force of law if the impossibility is absolute. In other words, we are the Corona virus. If we consider it a force majeure, then its impact on the contractual obligations of all users of the implementation on it lapses. This commitment has an effect, which is the contracting party's non-commitment to compensation and that it is not obligated to guarantee unless there is a text or agreement that stipulates otherwise. While if we consider the Corona virus an emergency circumstance, its impact on contractual obligations is impossible, but rather stressful on the debtor, from the two contracting parties. Either they agree to settle the dispute amicably between them, or they go to the judiciary in order to achieve a

balance between the two parties to the contract. In this area, the judge will be one of the options the following:

- If the judge chooses to stop the implementation of contractual obligations within a certain extent if he expects the accident to disappear within, but so far the deep studies of this virus have not proven a sure date for its demise.
- The case judge can choose to reduce the obligation to a reasonable extent on the burdensome party, which is the debtor, as if the judge decides in the lease contract, for example, to reduce the rent on the tenant or exempt it from it
- Or if the judge chooses to increase the obligations on the creditor. Or he may resort to rescinding the contract and the effect of rescission is to return the situation to what it was before the contract. From all of the above, we conclude that the Corona virus is an emergency circumstance that relieves or mitigates contractual obligations in accordance with the provisions of the theory of emergency conditions.

The second topic: the state of emergency and its impact on the administrative decision

The first requirement: What is the state of emergency?

The state of emergency is one of the exceptional circumstances that cannot be faced through the national legislation in force in normal circumstances, in which exceptional powers are granted to the authorities in which some freedoms and rights are restricted. Some jurisprudence defines the state of emergency as a legal system that is approved in accordance with the provisions of the constitution and special laws to protect the national interest, and it is not resorted to except in exceptional and temporary cases, within the limits of facing these exceptional circumstances or emergency circumstances, where civil authority is transferred to the military authority and the executive authority exceeds the limits of its powers and its jurisdiction, and in some cases it may amount to a violation of the legislation in force (Amara, 2014/2015).

According to some jurisprudence (Khalil & Badir, 2018), emergency laws in Jordan are about martial law, as martial law is the provisions that are issued in cases and circumstances more dangerous than those in which the state of resorting to emergency laws is announced. Article 125 of the constitution stipulates The Jordanian government of 1952 provided that in the event that the Kingdom faces dangerous circumstances that cannot be deterred or bypassed in the event of emergency provisions, the King may, based on the decision of the Council of Ministers, declare martial law, and some jurisprudence does not differentiate between martial law and emergency law, as it finds that the emergency system is more modern than the system of provisions Martial law because the system of martial law is a legal system prepared to meet exceptional circumstances (Al-Sherbiny, 1964). In our opinion, the announcement of martial law involves the announcement of work and the activation of emergency laws, including the defense law.

The researchers agree that the system of martial law, whether of a simple or aggravated type, entails strengthening the executive authority by giving it special powers that go beyond those powers in normal cases, including judicial powers and legislative powers in some cases. It also entails liberating the executive authority from some of the restrictions that are placed in normal circumstances (Abu Sway, 2011).

The International Covenant on Civil and Political Rights has established a state of emergency under Article 4 of it, which states: “In exceptional cases of emergency that threaten the life of the nation and whose existence has been officially declared, the states party to this covenant may take, within the narrowest limits required by the situation, measures that are not bound by their obligations. The present Covenant is required, provided that these measures do not conflict with their other obligations under international law and do not involve discrimination whose sole justification is race, color, sex, language, religion or social origin.” (Al-Ukaili, 2018).

The position of the International Covenant on the State of Emergency is similar to the position of the European Convention on Human Rights, which stipulates under Article 15 of it that “in time of war or other public emergency that threatens the life of the nation, any High

Contracting Party may take measures that contravene its obligations set forth in the Convention within the narrowest limits dictated by the exigencies of the case and provided that These measures do not conflict with his other obligations under international law" (Mohammed, 2013).

The American Convention on Human Rights, in its text 27, has expanded in defining the limits of a state of emergency, as it includes under the aforementioned text a state of war or public danger or any circumstance that may threaten the independence and security of the state, where the text came: "A state party can, in times of war or public danger, or otherwise It is an emergency situation that threatens the independence or security of a State to take measures limiting its obligations under the present Convention, but only to the extent and for the period required by the necessities of the emergency situation, provided that such measures do not conflict with its other obligations under international law and do not discriminate on the grounds of race, sex or language religion, or social origin. The American Convention added rights with immunity that may not be violated in emergency and exceptional circumstances, including the right to name, prisoners' rights, children's rights, and the right to kinship. As for non-basic rights, they are restricted based on the state of emergency and conditions of war (Mantawi, 2012).

From the foregoing, it is noted that the jurisprudential definitions and the definitions of the texts of international agreements have unanimously agreed that the state of emergency accompanies circumstances that threaten the security of the nation, its life, its survival and its entity, even if it differs in determining the special details.

As for the legal framework for the state of emergency, the Jordanian Constitution of 1952 stipulated under Article (124): "If something happens that calls for defending the homeland in the event of an emergency, a law is issued in the name of the Defense Law, according to which the authority is given to the person designated by law to take the necessary measures and procedures, including: This is the power to stop the ordinary laws of the state to secure the defense of the homeland, and the defense law is effective when it is announced by a royal decree issued based on a decision of the Council of Ministers.

The Jordanian Defense Law No (13) of 1992 (Official Gazette No. 3815, 1992) was enacted regulating the provisions for declaring a state of emergency, explaining what the state of emergency is, its accompanying legal conditions, and the authority to announce it. Article two of it states that; In the event of something that calls for the defense of the homeland in the event of an emergency that threatens national security or public safety in all parts of the Kingdom or in an area of it due to the outbreak of war, or the emergence of a situation threatening its occurrence, or the occurrence of disturbances, internal armed strife, public disasters, the spread of a pest, or An epidemic declares the implementation of this law by a royal will issued based on a decision of the Council of Ministers.

It was stipulated, in accordance with paragraph (b) of the aforementioned text, that the royal will include a statement of the situation for which it was decided to announce the implementation of this law, the area in which it will be applied, and the date of its enforcement.

And the state of emergency is suspended by virtue of a royal will issued based on the decision of the Prime Minister (text of Article (2/c) of the Defense Law).

This law corresponds to what was stipulated in the Egyptian Constitution of 2014 under Article 154 of it, which refers to Emergency Law No. 162 of 1958 and its subsequent amendments. (/www.constituteproject.org/)

For declaring and stopping a state of emergency, formal and objective legal conditions must be met when declaring a state of emergency, according to the following:

Formal Conditions

a. Specialist record:

Where the work of the Defense Law is announced according to a royal will issued based on a decision of the Council of Ministers, and it is stipulated that the royal will include a statement of the situation for which it was decided to announce the work of the Defense Law, specifically for the area in which it will be applied and the date of its implementation, as stated in Article (2/b) From the Jordanian Defense Law of 1992. The suspension of the law is also announced by virtue of a royal will issued based on a decision of the Council of Ministers, as stated in the same article, paragraph (C).

b. The Prime Minister exercises his powers by written orders:

We find that this condition, which was stipulated in Article (4/c) of the same law mentioned above, is a matter that must be called for by the exceptional circumstance in which it was announced that the Defense Law would be enforced.

c. time constraint:

Since the state of emergency is an exceptional circumstance, this requires that it be implemented during a specific period of time and not a permanent state, and this period varies from one country to another. The text in Palestine granted the President of the Palestinian National Authority to announce it for a period not exceeding thirty days, and the same is true for the Iraqi legislator, while this period in Egypt increases to three months. It was announced for him, whereby the Council of Ministers announced the cessation of the state of emergency in accordance with the text of Article 2/c of the Defense Law (khalel, 2018).

d. Regulatory entry:

The Jordanian Constitution and the Defense Law did not include a special provision that obliges the executive authority to present the declaration of a state of emergency and the measures that will be taken during the emergency period to the legislative authority. There is also no text that grants the legislative authority the power to end the state of emergency or interfere in it, whether positively or negatively.

As for the position of the Egyptian legislator, it included approving the oversight of the measures taken by the authority during the period of the state of emergency, as the text of Article (2) of Law No. 37 of 1972 amending the Egyptian Emergency Law stipulates that the emergency decision must be presented to the Assembly within the following fifteen days to decide What he sees about it, and if the People's Assembly is dissolved, the matter shall be presented to the new Assembly in its first meeting. If it is not presented to the Assembly, or presented and not approved, the state of emergency shall be considered terminated. Thus, we note that the authority of the executive authority to end the state of emergency in Jordan is broader than that of the Egyptian legislator, as it is the authority exclusively competent to declare a state of emergency, as it is the authority competent to end it. (Khalel, 2018).

Despite the absence of a clear oversight restriction, this does not mean approving and continuing a state of emergency despite the end of the emergency and the exceptional state, because this deviates the state from the concept of a democratic state and the rule of law. This contradicts the approach of the Jordanian government represented by the head of the executive authority and the safety valve between the three authorities (His Majesty King Abdullah II), who, in his discussion papers, emphasized the state of law approach (http://www.pm.gov.jo/category/1477259615.html), As declaring a state of emergency does not mean disrupting the principle of legality, its declaration does not mean the absolute disruption of constitutional guarantees for individuals, but it entails an expansion of the government's powers and restricting some rights only to the extent necessary to confront the emergency situation (abdalrahman, 2008).

States remain subject to the principle of international control. Since 1956, the International Labor Organization established the principle of control, as it recognized that countries are not the only arbiter that can assess the need to take this measure without disciplinary action at the international level. He did not respect the rules of international law, as merely following the constitutional and internal law is not enough to justify the project over a declaration of emergency, and states cannot invoke the principle of sovereignty or the provisions of their internal laws to get rid of their international obligations (sayf aleslam).

Objective Conditions

a. An exceptional circumstance occurs:

The extraordinary exceptional situation is represented by imminent external dangers that affect the security of the homeland and the safety of its citizens, such as a situation that threatens national security or public safety in all parts of the Kingdom or in a region of it due to the occurrence of war, or the emergence of a situation that threatens its occurrence, the occurrence of disturbances, internal armed strife, general disasters or the spread of a scourge Or, as stated in the text of Article (2) of the Jordanian Defense Law of 1992.

b. under purpose:

The work of the law must be with the aim of taking the necessary measures to secure public safety and defend the Kingdom within the limits of facing the exceptional circumstance and the state of emergency, as the aim of the announcement of the law or the measures taken after its announcement should not be aimed at violating the rights and freedoms of individuals and suppressing them, as Article 3 stipulates of the Defense Act mentioned on:

"The application of this law is entrusted to the Prime Minister to take the necessary measures and measures to ensure public safety and defend the Kingdom without being bound by the provisions of the ordinary laws in force."

The second requirement: the relationship between specialization and the theory of exceptional circumstances:

Specialization means the legal authority granted to an employee or a public authority to carry out a legal business[30]. Some define it as the division of work between the public bodies of the state, which are taken over by laws and organizational decisions in accordance with the requirements of the public interest[31]. Constitutions determine the subjects that the executive, legislative, and judicial authorities may engage in. It is not permissible for it to transgress it, and if it violates this rule, its decision will be tainted by the defective usurpation of power. The man of administration does not have the right to exercise any of the powers of the legislative and judicial authorities. If he did that, this action resulted in a lack of administrative decision because we were in front of a situation of usurpation of power[32].

Whereas, if the life of the nation is exposed to crises and dangers that could lead to the collapse of the state or endanger its safety, such exceptional circumstances allow the executive authority to override the rules of job specialization originally established for normal circumstances, so it becomes able to engage in legislation, which is originally the authority's jurisdiction Legislative, in the midst of these circumstances that the country is going through, the constitutional legitimacy must allow certain parties represented by the executive authority to take the necessary decisions to confront the dangers that the country is going through, after the availability of certain conditions and specific procedures stipulated in these constitutions[33].

And the right of the executive authority to take some exceptional decisions, which are tainted by a defect specialization, which is embodied in the usurpation of power because it falls within the legislative field or is tainted with a defective violation of the law, as such decisions

are considered illegal in the standard of general rules that govern normal conditions at a time when they are considered legitimate. It is obligatory under exceptional circumstances when it is necessary to protect the country from an imminent danger[34].

From the foregoing, it becomes clear to us that the executive authority, when it performs the procedures and takes the necessary decisions to confront exceptional circumstances, has exceeded the specialization granted to it and usurped the authority. Although what the executive authority exercises under these circumstances were within the jurisdiction of the legislative authority, constitutions usually authorize the executive authority to take those actions to face this exceptional circumstance.

FOOTNOTES

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