

THE LEGAL SYSTEM FOR DECLARING A STATE OF EMERGENCY IN THE JORDAN CONSTITUTION

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Abstract

This study examined one of the applications of the necessity theory in the Jordanian constitution of 1952, which relates to declaring the state of emergency and martial law in accordance with the provisions of Articles 124, 125 of the constitution. The applying of this exceptional legal system is resorted to in the event that the state is exposed to a great risk that cannot be prevented by ordinary legal means. While declaring the implementation of the Defense and martial laws are considered acts of sovereignty, but the measures taken according to them are subject to control by the administrative judiciary in the event that they exceed the limits of legal legitimacy. The study recommends that the legislator should amend Articles (124, 125) to be in one article with two paragraphs, with the necessity of subjecting their imposition to the supervision of the House of Representatives in terms of their implementation and extension.

Keywords: Jordanian Constitution, Necessity in Constitutional Law, Emergency, Martial Law

INTRODUCTION

The legal state is subject to the principle of legitimacy in normal and familiar circumstances. This necessitates the obligation to implement the normal legal system, if this system is applicable in normal circumstances. However, it cannot be applied in times of crisis and unrest that countries may be exposed to at the present time. In such dangerous circumstances, the ordinary law is useless to face them.

Therefore, lawmakers expected in all constitutions that the state would be exposed to serious and exceptional risks that threaten its legal entity, which forces it to confront it, such as being exposed to a state of war and emergency, insurrection, terrorism, or economic or natural problems. These unusual cases are the basis for Constitutional prediction to regulate their confrontation in ways not familiar to the ordinary legal system.

Lawmakers of comparative Constitutional systems have dealt with how to face the extraordinary circumstances. Most of these systems set laws in advance in their Constitutions, specifying the conditions for their application and resorting to implementing them when these conditions are met. This method of confrontation is called "the system of legislations prior to the state of emergency." On the other hand, there are those who deal with that situation by issuing the legislations required to confront the state of necessity, "the contemporary legislation of the state of emergency", which is in force in the United Kingdom

Accordingly, the Jordanian Constitutional legislator, similar to the other comparative constitutions, expected that the state would face some exceptional circumstances that carry within them signs of grave danger that cannot be faced with regular legal tools. Rather, the state needs an exceptional legal system prepared in advance to counter them; Therefore, Articles (124 and 125) of the Constitution are the determinants for declaring a state of emergency and martial law, which clarify the rules and conditions that must be met to declare their implementation, and the results that necessitate the declaration of the Defense Law and the martial administration. This was practically applied in Jordan from the period extending from 1967, the date of the June War with Israel and the occupation of the West Bank until 1992, the date of the cessation of martial law. Then it was re-enforced on March 17, 2020 on the impact of the Corona pandemic, as it is considered an unfamiliar dangerous disease on the health of people.

This unusual legal system, if applied, has various legal implications and effects, which differ from one state to another, even if they are identical in the field of rights and freedoms in terms of limiting their practice and encroachment upon them, by imposing tight control, unlike the case in normal circumstances. And in order that the authorities in charge of the disciplinary procedures required by that exceptional case may not deviate, these procedures are subject to judicial oversight.

The issue of the study stands out in knowing the extent to which the Constitution is keen to preserving the principle of legitimacy in the event of a state of emergency and martial law, the extent of the impact of this exceptional system on this legal principle, and its implications for rights and freedoms. Based on the above, the problem of the study revolves around the answer to the following questions: First, what are the constitutional conditions for declaring a state of emergency and martial law in the Jordan legal system? Second, to what extent are they subject to judicial and parliamentary oversight? Third, what are the legal implications of declaring a state of emergency and martial law?

The study seeks to clarify the rules regulating one of the applications of the theory of necessity in the Jordanian Constitution, and its shortcomings and limitations, given that these rules have not been subject to Constitutional amendment to keep pace with what is in force in most comparative constitutional systems in a way that enhances the activation of parliamentary oversight over their declaration, extension or cessation.

To reach the desired end of this study, the researcher will follow the analytical and critical approach according to which we will indicate and analyze the legal texts related to the study, based on the jurisprudential opinions that dealt with this topic through analysis and criticism, supported by the judicial rulings related to the study, which clearly show the aspects of deficiency and ambiguity that afflicted these exceptional systems.

In line with the aims of the study, and to answer the study questions raised by the problem, I decided to divide the study plan as follows: The state of emergency and its legal justifications. In which we will address the concept of the state of emergency and the conditions for its declaration. I will also address the control over of the state of emergency and martial law, and the legal implications of their declaration on individual rights and freedoms, especially freedom of the press and publication.

The State of Emergency and its Legal Justifications

Comparative constitutions laid down the constitutional basis for dealing with exceptional circumstances, whether in France or Egypt, and referred the details to the relevant laws to address this situation. In the Jordanian Constitutional Regulation of 1952, we find that the lawmaker regulated the state of emergency and martial law in Articles (124 and 125) of the Constitution, including the implementation of the defense law and the instructions of martial administration. On this basis, I will discuss in this topic the study of the concept of the state of emergency, its nature and legal justifications as follows:

The Concept of the State of Emergency and its Legal Nature

The Jordanian Constitution, as is the case in the comparative constitutions, did not define the concept of the state of emergency, which led the legal jurisprudence to define it as “a legal system established by urgent constitutional laws to protect national interests and resorted to only exceptionally and temporarily to face the emergency conditions that are limited to legitimate administration” (Ahmed Fathi, 1999), Or it is the state in which the executive authority is permitted to have more extensive powers than it has in normal circumstances; given the threats to the safety and security of the state (Taima Al-Jarf, 1960).

1. Consistent with the foregoing, the state of emergency is achieved in the state in general, if arise in the country exceptional emergency circumstances that make the executive authority unable to re-impose security and stability under its usual powers. Accordingly, this situation causes it to deviate from some rules of the Constitution and ordinary laws, and resort to imposing an exceptional legal system

predetermined in the Constitution that differs in its characteristics and effects according to different legal system, (Al-Amiri, 2016).

2. Comparative constitutions differ among themselves regarding the constitutionally competent authority to declare a state of emergency, although most of them agree to assign it to the head of state. In the Jordanian Constitutional system, and from the Articles (124 and 125) of the Constitution, it is clear to us that the declaration of a state of emergency and martial law is vested in the executive authority alone, in contrast to what most of the comparative constitutional systems have made in partnership with Parliament. With reference to Article (124) of the Constitution, I find it stating that:

“If something happens that calls for the defense of the homeland in the event of an emergency, then a law is issued in the name of the Defense Law under which the authority is given to the person appointed by the law to take the necessary measures and procedures, including the power to stop the ordinary laws of the country to secure defending the homeland. The defense law shall take effect when it is announced by a royal decree issued upon a decision of the Council of Ministers”, (Article (103) of the Syrian Constitution of 2012 states).

The Supreme Court of Justice once stated on the occasion of challenging the decision of the Director of Publications to suspend Al-Yaqatha newspaper in light of the Defense Law of 1935, which was issued in 1954, by saying " This is because the Constitution entrusts His Majesty the King with the power to announce the Defense Law and to suspend work, and that announcing the implementation of this law or suspending its implementation is among the acts of sovereignty imposed by the executive authority within its assessments related to the public good and the safety of the homeland, and no court has the right to control these assessments, (The Jordanian Bar Association Magazine, Supreme Court Judgment, Case No. 51/1945, No. 10, Second Year : 726).

On this basis, when the conditions for declaring a state of emergency are fulfilled, this declaration is considered an act of sovereignty, as the comparative judiciary in both France and Egypt referred to it; the judiciary is the one that appreciates this quality and its connection with the supreme policy of the state (Shatnawi, 2013). Thus, the royal decree issued for declaring the state of emergency or martial law, as seen by the majority of Jordanian jurisprudence and the judiciary, is an act of sovereignty, as it is not subject to judicial control, whether regular or administrative. The Supreme Court of Justice ruled in one of its rulings that “His Majesty the King alone is the one who has the authority to assess the existence or absence of emergency, and this court cannot address this assessment, because by this it would have usurped this authority and assumed it for itself, (The Jordanian Bar Association Journal, Supreme Justice, Decision No. 42/52/1952: 54).

The Supreme Court of Justice defined the acts of sovereignty: “Acts of sovereignty are actions that the executive authority carries out in its capacity as a governing authority, not an administrative authority, in order to achieve the supreme political interests of the state and to ensure respect for the Constitution and public bodies and to facilitate its relationship with foreign countries and maintain its internal and external security” (The Jordanian Bar Association Journal, Supreme Justice, Decision No. 12/8/1986: 543).

Contrary to the above, there is an aspect of comparative constitutional jurisprudence that considers that declaring the state of emergency is not considered an act of sovereignty for being issued by the head of state as the head of the executive authority, and not as a sovereign; This is because the Constitution defines the tasks of the executive authority in advance to maintain public order, which makes this decision administrative subject to appeal before the judiciary. Saying otherwise is the denial of all the guarantees of individual rights that must be met in any democratic system, or in the event that this decision is issued in contravention of the cases required by law or the conditions for resorting to them (Asfour, 1976).

In implementation of this, the state of emergency was declared following the Corona pandemic by a royal decree upon the recommendation of the Council of Ministers March 13, 2020 throughout the Kingdom, which necessitated the work of the Defense Law of 1992.

Justifications for Declaring a State of Emergency

If the constitutional requirements that require the declaration of a state of emergency are available to meet the exceptional circumstances. This declaration is not an end in itself as it is an

appropriate means to ward off the present danger. In order for the competent authority to avoid misusing these exceptional powers to infringe on public authorities in the state and individual rights and freedoms, it requires determining the justifications and cases that the competent authority has resorted to declaring a state of emergency. Otherwise, its declaration of that exceptional legal system would be null. Therefore, emergency laws go to define those justifications (Sami, 1982). Accordingly, in this Part, I will determine the justifications for declaring a state of emergency in the Jordanian legal system as follows:

The Occurrence of a State of Emergency that Requires the Defense of the Homeland.

The Jordanian Constitutional lawmaker did not stipulate, as is the case in the comparative constitutions, to specify the reasons that justify the declaration of implementation of emergency laws. Rather, he delegated it to the ordinary legislator of the Defense Law (Al-Ghwairi, 200). The justifications for declaring a state of emergency in any constitutional system lie in the exceptional circumstances to which the state is exposed, which form the basis of the theory of necessity in constitutional law, which is defined as "that case of serious and current danger that cannot be remedied by ordinary means. If it can be warded off by ordinary means, it is not considered serious, which leads the authorities in charge of the state of emergency to resort to exceptional legal means to ward off this risk and face crises" (Gabriel, 1988).

Among the requirements of the state of emergency, as defined by the constitutional jurisprudence, there must be a serious and immediate danger, and its nature leads to it being out of the usual and expected risks in normal circumstances. This gives it the character of an unusual danger, making it impossible to confront it by ordinary means. If there is a legal or constitutional means to confront those conditions that threaten the integrity of the state, it must be resorted to. In addition, the disappearance of these circumstances necessitates the immediate termination of the emergency system, with all its implications, because abnormal conditions are not a permanent characteristic of peoples' lives (Gharibal, 1966).

According to the point of view of the constitutional jurisprudence, this danger may be external, and is represented in the form of declaring war or embarking on an invasion or a serious threat, and this danger may be internal in the form of insurrection among the majority of the people or the outbreak of a civil war, or a general strike that paralyzes one of the public facilities and is severe in terms of its extent and duration, or a violent economic crisis that causes social disasters, epidemics, floods, or natural disasters, these are all examples of grave danger (El-Jamal, 1999).

Based on the above, the state of emergency that occurs and requires the defense of the homeland in accordance with Article (124) of the Jordanian Constitution, requires the emergence of an imminent danger with which the administrative authorities cannot carry out their main duties and tasks, which requires rapid intervention to face this danger.

The occasion was provided to the Jordanian Supreme Court of Justice to define the concept of exceptional circumstances, saying: "The emergence of a grave danger that cannot be confronted by normal legal methods, such as war, disasters, and internal strife, and the nature of this danger is that it is an attack of an exceptional character" (Jordanian Bar Association Journal, Supreme Court Judgment 226/97, 1988, First and Second Issues of Year 46,: 389).

The Jordanian Constitutional legislator did not specify and define states of emergency, but rather left them to the Defense Law of 1992 in Article (2), which defined these cases in general and broad terms, thus giving way for interpretation and explanation in a manner that may expand or narrow their scope or limits (Al-Ghuwairi, Ahmad, op, cit : 342). It was stated in this Article that "if something occurs that calls for the defense of the homeland in the event of an emergency threatening national security or public safety throughout the Kingdom or in a region thereof due to the occurrence of war or a threatening situation or the occurrence of disturbances or internal strife or general disasters or the spread of a pest or epidemic, declaration of this law shall be enforced by a royal decree issued upon a decision of the Council of Ministers".

It is noted that at the forefront of those reasons that require the defense of the homeland, the state of war or the state of a situation threatening for its occurrence, which is the most

compelling reason for declaring a state of emergency. Accordingly, the state of emergency and martial law were declared April 25, 1957 and ended at the end of Nov. 1958. Also, it was declared June 5, 1967 due to the war with Israel. As for the threat for its occurrence, it is the taking of actions by a state that indicate its intention to wage war, such as the mobilization of soldiers and military equipment in preparation for that war. These causes also include unrest or general disasters that have not been determined. They may be natural disasters such as earthquakes, volcanoes and floods, or the spread of an agricultural pest, such as if the state is exposed to the danger of locust swarms that threaten the state's food security. Or an epidemic of a dangerous nature for the population, such as cholera and plague, or, as is the case at present, the spread of Corona disease, which is included in the framework of diseases dangerous to public safety. But if the disease is a common disease such as the flu, this does not justify declaring a state of emergency. Accordingly, the Jordanian Cabinet's decision stated the following: "In view of the emergency conditions the Hashemite Kingdom of Jordan is going through due to the World Health Organization's declaration of the spread of the Coronavirus, to confront this epidemic at the national level, and to protect public safety throughout the Kingdom, the Council of Ministers based on the provisions of Article (124) of the Constitution and Paragraphs (A) and (B) of Article (2) of Defense Law No. 13 of 1992 announced the Defense Law No. 13 of 1992 throughout the Hashemite Kingdom of Jordan as of the date of the issuance of the Royal Decree. Accordingly, the Royal Decree was issued to implement the Defense Law, effective March 17, 2020, throughout the Kingdom.

In addition to the above, the occurrence of internal strife (This term is not clear in terms of the lack of a precise and controlled connotation to it) (Ahmad Al-Ghuwairi, op.,cit.,: 345-347). However it can be conceived in the form of a revolution or an armed insurrection that impedes the work of the general constitutional authorities in an unusual way or a plot to overthrow the government.

Thus, the constitutional legislator has linked the occurrence of emergency that its seriousness and threat to the safety of the state necessitate the defense to maintain its security and safety, and the declaration of a state of emergency; If that situation is by its very nature not of such a serious nature as to warrant the defense of the State, then it does not require the declaration of a state of emergency; Not every emergency requires the declaration of a state of emergency, for example if a demonstration or armed rebellion takes place, and it is possible to break that demonstration or eliminate that rebellion, it does not justify the declaration of a state of emergency, unless this emergency exacerbated and led to the prevention of members of Parliament from meeting, for example, or led to the outbreak of civil war.

The Issuance of a Royal Decree to Operate the Defense Law

This condition entails the fulfillment of any state of emergency that requires the issuance of a decision by the Council of Ministers and with the approval of the King, to implement the Defense Law to confront this danger. This decree requires the enforcement of the Defense Law, and the reasons for its implementation, the region in which it is applied and the date of its implementation (Paragraph (b) of Article Two of the Defense Law), Article (2) of this law stipulates that "if something occurs that calls for the defense of the homeland in the event of an emergency threatening national security or public safety throughout the Kingdom or in a region thereof due to the occurrence of war or a situation threatening for its occurrence, or disturbances or internal strife or Public disasters or the spread of a pest or epidemic, the implementation of this law is declared by virtue of a royal decree issued based on a decision of the Council of Ministers".

It is noticed that the legislator's wording in the defense law came with the phrase "declaring the defense law" while the constitutional legislator used in Article (124) the phrase "then a law is issued in the name of the defense law." Both terms have a legal meaning different from the other. I believe that what was mentioned in the Defense Law is the correct meaning consistent with its status in the legal system in legislation. It has completed the release stage. However, its implementation depends on a decision by the Council of Ministers and the issuance of a royal decree if there are any reasons for this.

This law, which is called in the countries compared to the emergency law, is part of the state's legal system. However, this exceptional law does not apply to it except in the case of declaring a state of emergency as an inevitable consequence of its declaration. The Supreme Court of Justice has been keen in its rulings to emphasize the exceptional nature of the defense law, as it ruled that "the defense law is an exceptional law and requires its application to the narrowest extent on facts that are not suspected to endanger state security or public safety" (High Court of Justice ruling No. 115/87, mentioned in, Al-Khatib, Nu'man, previous reference: 151). The Defense Law grants the Prime Minister or whoever he delegates to take all necessary measures specified in this law to implement it, ensure safety and defend the state, (Article (3) of the Jordanian Defense Law No. (13) Of 1992).

The enforcement of the Defense Law requires the issuance of defense systems, such as the publications control system and individual defense orders, and they are called control systems in exceptional and specific circumstances for the executive authority, and it does not grant it the right to issue them in normal circumstances (Shatnawi, 1995). The defense systems were the subject of jurisprudential controversy in Jordan, as there are those who believe that their legal value exceeds all legal rules in the Jordanian legal system, including the Constitution (Shatnawi, 1996) and there are those who believe that the legal value of defense systems has the same legal value as ordinary laws only. Thus it is a priori inferior to the Constitution based on the fact that the Constitutional legislator mentioned in the Constitutional text "... including the suspension of the ordinary laws". What is meant by ordinary laws are those issued by the legislative authority or temporary laws issued by the executive authority in accordance with the provisions of Article (94) of the Constitution; It is inconceivable that the regulations are ranked above the provisions of the Constitution. It is the reference for their issuance by the executive authority (Adel Al-Hiyari, op, cit: 640). This is what the Jordanian judiciary went to in its rulings, where the Supreme Court of Justice ruled that "Whereas retroactive effect in the law is considered permissible under Article (93), Paragraph (2) of the Constitution, and since the regulations issued under Article (4) of the Defense Law have the force of law based on the provisions of Article (4) of the Defense Law, which states that the King lays down defense systems to ensure the security and defense of the Kingdom. These regulations may stipulate provisions on trade and export, meaning that the Lawmaker considered the regulations issued under the article of the Defense Law have the force of law and therefore, the contested decision was issued in accordance with the law" (The Jordanian Bar Association Journal, Justice Alia, 4/9/1985: 1412).

Based on that, several defense regulations were issued by the Prime Minister following the declaration of the state of emergency in Jordan March 13, 2020, related to the suspension of some provisions of the Social Security Law, the curfew inside the Kingdom, some financial penalties, the seizure of cars for violating the ban, the establishment of a fund to collect donations to confront Corona pandemic, organizing distance education for schools and universities, supporting economic establishments, supporting workers and protecting them from the damages of unemployment.

The Declaration of Martial Law Based on the Gravity and Exacerbation of the Danger.

The Constitutional legislator did not define the concept of a state of martial law as is the case in a state of emergency, (A definition was mentioned in the Ottoman Basic Law of Martial Law 1938 in Article 113). However, one aspect of jurisprudence defined its concept as "an exceptional Constitutional system based on the idea of the danger threatening the national entity, and it permits the competent authorities to take all the measures stipulated in the law and designated to protect the territory of the state against the dangers arising from internal or external armed aggression, and its establishment can be achieved by transferring the powers of the civilian authorities to the military authorities (Mahmoud, 1990).

It is worth noting here that there is no inevitable correlation between declaring a state of emergency that entails the enforcement of the Defense Law and declaring martial law. The second cannot be implemented without firstly declaring the state of emergency because the state of

martial law is one of the consequences of the exacerbation of the seriousness of the danger specified in Article (124) of the Constitution. The executive authority, represented by the Council of Ministers, has the discretionary power that the defense law is not feasible alone for defending and repelling the present danger. Therefore it is necessary to resort to the application of Article (125) of the Constitution (Ali K. Shatnawi, Principles of Jordanian Administrative Law, op, cit: 75).

Thus, it can be said that there is no specific criterion to measure the degree of risk aggravation or lack thereof for the purposes of resorting to the declaration of martial law. Resorting to the application of Article (124) of the Constitution is the first step to move to the second step which is the declaration of martial law as stipulated in Article (125) to confront the state of emergency. They are not two options available to the executive authority, and it can take either of them without a sequence or succession. (Nu'man Al-Khatib, op.,cit., 155).

Based on the foregoing, the declaration of martial law in the Jordanian constitutional system is a consequence and it is not an inevitable necessity of declaring a state of emergency. The assessment of its implementation depends on the extent of the exacerbation of the state of danger, whether it is internal or external. I think that resorting to this legal system may emerge clearly in the event of a war with a country and the consequences of it worsened. For example, if the war is expected to last for several days and was initially confined to repelling that external aggression, and after a month the aggressor state occupied part of the state's territory, then this calls for the declaration of martial law.

It is clear from the foregoing that the state of martial law is resorted to based on the assessment that the measures taken under Article (124) of the Constitution are insufficient for defending the homeland, which necessitates the proclamation of martial law by the King based on a decision of the Council of Ministers in all parts of the Kingdom, or in any part thereof. In the event that martial law is declared, the King has the right to issue any instructions according to a royal decree for the purposes of defending the Kingdom.

The second paragraph states, "When declaring martial law, the King may issue by a royal decree any instructions that may be necessary for the purposes of defending the Kingdom regardless of the provisions of any applicable law. All persons in charge of implementing those instructions shall remain subject to the legal liability resulting from their actions regarding the provisions of the laws, until they are relieved of that responsibility by a special law to be drawn up for this purpose" .

Martial instructions are considered according to the opinion of the Supreme Court of Justice, ordinary legislation in the legal structure of the state. According to Article (135) of the Constitution, when declaring martial law, the King may issue according to a royal decree any instructions that may be necessary for the purposes of defending the Kingdom regardless of the provisions of any applicable law. This Article concludes with the suspension of the laws inconsistent with these instructions (The Jordanian Bar Association Magazine, Supreme Justice, (1967): 47).

In implementation of this, several instructions were issued to the martial administration in Jordan, including the martial administration instructions of 1970 and the 1967 instructions issued pursuant to the second paragraph of Article (125) of the Constitution, which in Article (4) gave the military governor and local military rulers the power to arrest search and detain any person for a period that they deem appropriate, and the person arrested on account of a specific charge shall be referred within 15 days to the martial courts.

Accordingly, it can be said that the state of emergency differs from martial law, even if it was issued by one authority, which is the executive authority in terms of the persons responsible for its implementation, and the different body looking into the violations committed in contravention of the provisions of each of them. This situation, unlike the state of emergency, requires the appointment of a general military governor and military rulers in the governorates, and this is what was applied in Jordan in 1967, as the military authorities replaced the civil authorities in exercising the functions mentioned in the martial administration instructions (Ahmed Ali, 1978). Article (2) of the instructions of martial law of 1967 stipulates that a general military governor is appointed by a decision of the Council of Ministers and with the approval of

the King, all powers and authorities of His Majesty the King and the Prime Minister shall be exercised in order to secure and defend public safety in the Kingdom under the Defense Law and all regulations and orders issued pursuant thereto.

The Military Governor General has the power to arrest any person and refer him to the military courts to be tried for the crimes stipulated in Article (8) of the martial administration Instructions. The rulings of these courts are final and may not be challenged before any judicial authority. The first paragraph of Article (9) of the 1967 Martial Administration Instructions stipulated that “the Military Governor General, regardless of what is stated in any other law or rule, may appoint, in accordance with his powers under these instructions, the deterrent penalties for any crime or violation of the crimes and violations of the previous article.

Control over Emergency and Martial Law Procedures and their Legal Effects

Declaring a state of emergency and martial law is not subject to judicial oversight as an act of sovereignty. However, the measures taken under this declaration are subject to judicial oversight to preserve exceptional legality. Accordingly, I will address the main aspects pertaining to control and the oversight of these measures and legal effects as follows:

Parliamentary Control over the Declaration of a State of Emergency

Comparative constitutions varied regarding imposing parliamentary oversight on the declaration of a state of emergency. By referring to the provisions of Articles (124 and 125) of the Jordanian Constitution, I find that the constitutional legislator did not require the implementation of parliamentary oversight over the declaration of a state of emergency and martial law, whether during the stage of its declaration, its extension, or termination, in contrast to what most comparative constitutions have stated, The Egyptian Constitutional Legislator of 2014 organized the declaration of a state of emergency in Article (154). which, in our opinion, is a legislative failure; Given its implications, the exceptional control powers may deviate from the established constitutional limits and maintain their existence despite the end of the justifications for declaring them. However, it does not prevent the exercise of political control in its various forms, such as questioning, interrogating, and putting forth confidence in the ministry (Al-Khatib). Therefore, an aspect of constitutional jurisprudence highlights the importance of parliamentary oversight over the declaration of a state of emergency because of the seriousness of this exceptional state on individual rights and freedoms, and this oversight granted by the constitution is a guarantee of constitutional guarantees, (Al-Sanawi, 2005). The Defense Law is also subject to the oversight and mandate of the National Assembly in the right to propose its amendment like any ordinary law, and it passes the same constitutional procedures specified for ordinary laws, (Al-Hanania, 2010). Nevertheless, the Council of Representatives has the right to exercise aspects of control over the followed constitutional procedures in a manner that requires political accountability of the Prime Minister and the ministers concerned with this issue if it is declared contrary to its constitutional and legal provisions.

Judicial Control over the State of Emergency and Martial Law

The legal jurisprudence almost unanimously agreed that the act of emergency and martial law does not completely exclude the principle of legality (Ubaid, 2002) rather; the procedures prescribed for the authorities in charge of them must be subject to judicial oversight. This is to stop its broad powers at its constitutional and legal limits in accordance with the conditions and controls established for them (Zakaria, 1966) given the nature of these procedures and measures that would prejudice the rights and freedoms of individuals (Shatnawi).

This exceptional system allows those authorities to deviate according to the constitutional and legal rules in case of necessity to give them a measure of freedom to act without fear of punishment or falling into illegality, to save the country from economic, political or other danger or crisis, (Yahya Al-Jamal, 1995).

The exceptional controls are subject to judicial control, so that the measures taken by the authorities in charge of them are in proportion to the case of necessity and do not go beyond it, because necessity is estimated according to its size. Article (8) of the Jordanian Defense Law specified the jurisdiction of the Supreme Court of Justice to consider measures that contravene the goals and objectives of the Defense Law, such as arrest and seizure of moveable funds. The first paragraph of Article (8) of the Jordanian Defense Law states. The Supreme Court of Justice ruled in one of its rulings: "The petitioner's commission of running a café for gambling, quarreling, drunkenness, revelry and bribery has nothing to do with public safety and defense of the Kingdom in the meaning stipulated in Article (9) of Defense System No. (2) Of 1939, since all these material acts are considered ordinary crimes punishable under the Penal Code. Therefore, the action taken by the governor to close the petitioner's café goes beyond the intended purpose in the aforementioned Article (9), which should be canceled (Jordan Bar Association Journal, Supreme Court of Justice ruling 87/115).

The Supreme Court of Justice also ruled in one of its rulings, "In terms of the authority of this court to annul the decision complained of, there is no doubt that this court has jurisdiction in seeing this request and discussing that decision even if it is associated with a royal decree, as this court shall not challenge this decree. Rather, it examines the legality of the administrative procedures carried out by the executive authority, which is considered responsible under the Constitution for these procedures, given that this authority is the direct agent for these actions that are associated with the ratification of His Majesty the King, (Ali, 1953).

The Implications of Declaring a State of Emergency

The implementation of the exceptional legal system dependent on the condition of the state of emergency entails several legal effects; some of these effects are stated in the Constitution itself. Others came in the Jordanian defense law. I will explain the most important of these effects in several points as follows:

The Impact of the State of Emergency on Individual Rights and Freedoms.

Constitutions tend in normal circumstances to establish a kind of relative balance between the exercise of rights and freedoms and their regulation by the public authority based on its responsibility to maintain public order in the state. Therefore, the constitution in any system is the primary determinant for protecting public rights and freedoms from any aggression by the executive and legislative authorities, especially with what the constitutional legislator delegates to them if they are organized, (Hassan, 2011).

Undoubtedly, the implementation of the state of emergency and martial law casts its shadows over the individual rights and freedoms stipulated between the constitution and the legislation governing those rights and freedoms, which leads this system to restrict them. These restrictions differ from one constitutional system to another. In implementation of this, Article (3) of the Defense Law stipulated the exceptional measures that the Prime Minister is entitled to take by written or oral order. These measures included placing restrictions on the freedom of persons to meet, as well as assigning any person to perform any work, and determining the dates for opening and closing public shops as well as the order to close all or some of these stores Article (4) of the Jordanian Defense Law states.

In this regard, it is necessary to distinguish between the regulatory texts and the peremptory texts mentioned in the Jordanian Constitution, in order to know the extent of the impact of the state of emergency and martial law on it. The peremptory texts are those texts that determine the origin of right or freedom, but they do not accept restriction or regulation in an absolute way, whether from the legislator or the executive authority (Adel Abu al-Khair, 1995). These constitutional texts are immediately enforceable without waiting for the legislator to intervene to regulate them, because they define legal statuses that must be respected by the legislator. These rights and freedoms are usually focused on specific topics such as the ban on deporting Jordanian citizens, and the prohibition of the extradition of political refugees. Of the

peremptory texts cited by the constitutional legislator in the first paragraph of Article (9) of the Constitution, which states, "It is not permissible to deport a Jordanian from the Kingdom." This text states that no matter what the reasons are, it is not permissible for a Jordanian to be deported from the territory of the Jordanian state by any authority, whether executive or judicial, according to a court ruling. Or in the event that a law is issued by the legislative authority requiring the deportation, exile, or expulsion of the Jordanian from the state's territory, this law initially violates Article (9) of the Constitution, and is considered null for its violation of the provisions of the Constitution in normal circumstances or during the application of the state of emergency and martial law. In addition, it is not permissible or forbidden to not allow the Jordanian to return to the Jordanian state territory or to obstruct that in any way, such as threatening to arrest or not issuing a travel document as a result of losing that document (Hassan, 1978).

As for the regulatory texts; they are those texts by which the constitutional legislator defines the origin and essence of those rights and freedoms and then refers their organization to the ordinary legislator by a law issued by the legislative authority. This classification is inferred from the formal point of view by using the constitutional legislator with a phrase at the end of the constitutional text, the phrase "within the limits of the law", or "according to the provisions of the law" (Suad Al-Sharqawi, 1974).

These texts are subject to restriction during the declaration of the state of emergency and martial law. The authorities implementing the state of emergency resort to restricting freedom of movement, which is one of the important and intimate rights of the individual, and relying on the exercise of other rights and freedoms such as the right to trade and vote. However, the requirements of the supreme interest in the state allow it to restrict its practice contrary to normal circumstances. They resorted to closing some areas and curfew in some areas and public streets for a period to be determined, and limiting the opening and closing of shops, taking into account humanitarian conditions such as transporting the injured to hospitals (Suad Al-Sharqawi, 1974; Bassiouni, 1989). It was stated in Paragraph (H) of Article (4) of the Defense Law - determining the dates for opening and closing all or some of the public stores. I- Regulating and determining means of transportation between the different regions, closing any road or waterway or changing its direction and preventing traffic or organizing it.

Accordingly, Defense order no. (2) Was issued by the Prime Minister restricting the exercise of the right of movement, which affected the exercise of other aspects of those rights and freedoms, such as the right to work and trade. The defense order stated the following: Based on the provisions of Paragraph (a) of Article (4) of Defense Law No. (13) of 1992, and in view of what our region and the whole world is going through in terms of an emergency health condition and to prevent the spread of epidemics, I approved the issuance of the following defense order 1- People are prohibited to move and roam in all regions of the Kingdom, starting at seven in the morning on Saturday March 31, 2020 until further notice.

While persons enjoy some legal guarantees in normal circumstances, "it is not permissible to arrest and search except by a judicial order." However, in exceptional circumstances, this principle is not reliable, as suspects may be arrested, detained, and their housing searched. Reflecting this, it was stated in Paragraph (A) of Article (4) of the Defense Law, "... and arresting and detaining suspects or those threatening national security and public order".

The emergency system also casts it shadows on the freedom to form political parties. Accordingly, the government dissolved political parties in 1957 after the imposition of martial law despite the existence of the Political Parties Law of 1955. After the lifting of martial law, the government did not permit the establishment of any political party, as this was reflected in the election law for the House of Representatives in Paragraph (E) of Article (18) prohibiting the candidacy of any person belonging to an illegal organization, (Mahmoud).

In this regard, I believe, even if the state of emergency leads to the restriction of basic rights and freedoms, in order to enable the executive authority to face any manifestation of grave danger that threatens its security and safety, however, the interpretation and application of its restrictions on rights and freedoms should not be expanded. In addition to the fact that the Defense Law in this capacity and its progression must not contradict other provisions of the constitution

related to rights and freedoms; otherwise, this would lead to the demolition of the legal structure of the provisions of the Constitution.

The Freedom of the Press and Publishing

The freedom of the press and publishing is closely related to the freedom of expression, and it is the most basic rights on which the building of the democratic state is based. It is part of the public freedoms, which the democratic system is satisfied with inserting into the core of the relationship between rulers and the ruled.

The third paragraph of Article (15) of the Jordanian Constitution states that "the state guarantees freedom of the press, printing, publishing and the media within the limits of the law." This constitutional text requires the state to empower its citizens to have freedom of the press by not placing obstacles in regulatory legislation such as the Press and Publication Law except as a matter of relative regulation rather than restriction, so that a newspaper is not confiscated, stopped, or suspended except by a judicial order (Ibrahim, 1995). This leads to a very important result, which is the freedom to press without prior authorization within the limits of the law, in addition to the contents from which the right to publish newspapers and to obtain information from their various sources stems from.

In spite of the above, the constitutional legislator tightened control over this freedom in a single text in addition to what was stated in the Defense Law in the fifth paragraph of Article (15) of the Constitution which states that "In the event of the declaration of martial law or emergency, the law may be imposed on newspapers, pamphlets, literature, media and communication limited censorship in matters relating to public safety and national defense purposes." According to this text, the government has issued several regulations, such as the Publications Control Regulation No. (5) Of 1948, and Regulation No. (1) of 1952. These regulations have granted the administrative control powers to cancel or revoke the license of any newspaper, magazine or publication if it works at the instigation of individuals or bodies that violate constitutional principles or laws that harm the entity of the state provoke discord, disturb security, order and public tranquility, or attack individuals and groups to obtain illegal gains (Al-Shatnawi). These regulations also authorize the Press and Publication Controller to seize and search any correspondence, telegrams, and parcels in conjunction with the postal, telegraph and customs authorities, and he has the authority to issue an order prohibiting the press and publishing of any news that harms the peace and defense of Transjordan. Article (2) of the Press and Publication Law No. (5) Of 1948.

The wisdom of this constitutional ruling is the implementation of strict censorship on newspapers, pamphlets and literature to avoid its negative impact on public opinion in those circumstances that require the solidarity of the state and society together with all its capabilities to confront the state of danger that threatens the entity of the state. Therefore, this text permits the right to implement effective censorship on all publishing media with regard to the goals and objectives of defending the state.

It is our estimation that this fourth authority has an active role in uncovering the excesses of the authority based on implementing the defense law, in violation of the main objective of that oversight, thus enhancing and preserving the exceptional legitimacy that the state of emergency should not lead to its waste.

Labor or Compulsory Work

The employment contract is considered one of the consensual contracts that are subject to consent between its parties, which requires not to be compelled under the normal circumstances which subjects this relationship to the provisions of the Labor Law, except that such consent may be absent in exceptional circumstances. This is what was stated in the first paragraph of Article (13) of the Constitution, which states that "compulsory employment shall not be imposed on anyone except that, according to the law, it is permissible to impose work or service on any person: 1- In an emergency situation such as a state of war, or when a general danger occurs, or a

fire, flood, famine, earthquake, or severe epidemic disease of humans or animals, or animal, insect or plant pests, or any other pest like it, or in any other circumstances that may endanger the safety of all or some of the population.

This is what the legislator has prohibited in the Labor Law in normal circumstances and how it is considered a crime of forced labor, as Article (77) of the Jordanian Labor Law states, "In addition to any penalty stipulated in the legislation in force, the employer shall be punished for any violation he commits by using any worker forcibly. Or under threat, fraud or coercion, including seizing the travel document with a fine of no less than 500 dinars and no more than 1,000 dinars. The same penalty shall be imposed on the partner, the instigator, and the person involved in this use.

These texts are in line with international conventions that prohibit forced labor, as it was stated in the eighth paragraph of Article (3) of the International Covenant on Civil and Political Rights that "No one may be forced into forced labor or compulsory work." Then it came in Paragraph C/3 "For the purposes of this paragraph, the term forced labor or compulsory labor does not include any service imposed in cases of emergency or calamities threatening the life or well-being of the community. "However, it permits infringement of this right in times of danger and exceptional circumstances when the state is exposed to such matters (Abdulaziz, 1987).

As an exception to the general rules regarding the criminalization of forced labor, the constitutional legislator expected that the state of emergency, *i.e.* its form, requires facing this danger, especially in the event of war and other manifestations of danger, as it is necessary to defend the homeland and considered it one of the public duties of the citizens of the state that require their efforts in case of unusual circumstances. And this compulsory work may be with or without money.

CONCLUSION

The state of emergency represents an exceptional legal system to confront the grave danger whose cases were defined by the Jordanian Defense Law of 1992. This exceptional system in the Jordanian Constitution is of two degrees according to the exacerbation of the degree of danger present in one of its cases, represented by the justifications for its declaration. To begin with, it requires declaring a state of emergency by implementing the defense law. In the event that it is estimated to be ineffective in countering the present danger, then the declaration of martial law and the issuance of martial instructions shall be resorted to.

The reasons for declaring a state of emergency were wide and broad, although it came exclusively. The authorities in charge of implementing them were empowered with wide powers and authorities, which ultimately lead to the violation of the legality in force in normal circumstances, which increases the restrictions imposed on individuals' exercise of their rights and freedoms. It should be noted that the range of rights and freedoms that may be affected by the declaration of a state of emergency in the Jordanian legal system is that sect called organizational rights and freedoms, while the other sect, called preemptory rights, cannot be touched or violated in any way, so it is not permissible. An example of this is the deportation of the Jordanian from the Kingdom, whatever the reasons.

The study also concluded with a number of important and pivotal results in the scope of the defect in the constitutional organization of the legal system for the state of emergency and martial law. This exceptional legal system entrusted the executive authority with the absolute right to declare a state of emergency unilaterally without the slightest participation of the Parliament, whether in announcing its work or its end, in contravention of the comparative constitutional trends that assigned the Parliament a constitutional role in assessing the extent of resorting to this exceptional legal system. This gave the character of weak parliamentary oversight of this case as an application of the theory of necessity in constitutional law.

As I showed, this system is not absolute. Rather, it is subject to judicial control over procedures that the executive authority may bypass to preserve the principle of legality, and within the limits of its international obligations arising from international covenants such as the International Covenant on Civil and Political Rights.

Based on the aforementioned results, it is necessary to make some recommendations, the first of which is the necessity for the constitutional legislator to amend the provisions of Articles (124 and 125) as they are the legal basis for that case, so that they are combined together in one article on two paragraphs for their consistency in the arrangement of resorting to them, with the amendment of the constitutional wording. The phrase "promulgating the defense law" is to be replaced by the phrase "effecting the defense law," considering that it is a law that was issued by the National Assembly and approved by the King.

In view of the lack of parliamentary oversight over the state of emergency and martial law; It is necessary to add a provision to the proposed article, whereby the declaration to be presented to the House of Representatives necessitated the imposition of effective control on the executive authority during the state of emergency. In order to activate this oversight, it is also necessary to add a guarantee or a restriction to the guarantees for the dissolution of the parliament prohibiting the dissolution of the parliament during the period of emergency and martial law. This avoids the opportunity to circumvent the aforementioned by dissolving the parliament and then declaring a state of emergency.

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- Article (103) of the Syrian Constitution of 2012 states that: [T]he President of the Republic declares the state of emergency and cancels it by decree taken in the Council of Ministers meeting under his chairmanship and by a majority of two-thirds of its members, provided that it is presented to the People's Assembly in its first meeting, and the law defines the provisions related to this. Article (154) of the Egyptian Constitution of 2014 stipulates that: [T]he President of the Republic, after consulting the cabinet, declares a state of emergency as regulated by law, and this declaration must be presented to the House of Representatives within the next seven days to decide what it sees in it.
- The Jordanian bar Association Magazine, Supreme Court Judgment, Case No. 51/1945, No. 10, Second Year,: 726.
- The Egyptian Supreme Administrative Court ruled: that the decision to declare a state of emergency is one of the acts of sovereignty issued by the government as it is a ruling authority and not an administrative authority, as it is one of the supreme measures that are taken in order to defend the state's entity or establish security or public order in it. ... The Supreme Administrative Court - Appeal No. 1439 of Judicial Year 31, 1989.
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- The Jordanian Bar Association Journal*, Supreme Justice, Decision No. 42/52/1952, 54.
- The Jordanian Bar Association Journal*, Supreme Justice, Decision No. 12/8/1986: 543.
- Refer to these opinions: Sa'ad Asfour, 'The Problem of Guarantees and Public Freedoms in Egypt', *The Advocacy Magazine*, Fifty-sixth Year, Issues One and Two, (1976), 146-147: Ibrahim Darwish, *The Theory of Exceptional Circumstances, Journal of Government Cases Management*,3, Eleventh Year, (1976): 1023.
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- Jordanian Bar Association Journal*, Supreme Court Judgment 226/97, 1988, First and Second Issues of Year 46: 389.
- Al-Ghuwairi, Ahmad, *op., cit.*: 342.

Ahmad Al-Ghuwairi, *op.,cit.*,: 345-347.

Paragraph (b) of Article Two of the Defense Law states that: the Royal Decree shall include an indication of the situation in which the declaration of operation of this law is decided, the region in which it is applied, and the date of work.

High Court of Justice ruling No. 115/87, mentioned in, Al-Khatib, Nu'man, previous reference: 151.

Article (3) of the Jordanian Defense Law No. (13) of 1992

Shatnawi, A.K. (1995). *The jordanian administrative judiciary, book one, ruling of cancellation, (First Edition)*. Canaan Press, Irbid: 420.

Shatnawi, A.K. (1996). *Principles of jordanian administrative law, book two, administrative activity, (First Edition)*. University of Jordan Press, Amman: 519.

Adel Al-Hiyari, *op., cit.*, 640.

The Jordanian Bar Association Journal, Justice Alia, 4/9/1985: 1412

A definition was mentioned in the Ottoman Basic Law of Martial Law 1938 in Article 113 which stipulated: "Temporarily abolishing property laws and regulations, and a specific system will be established for how the subject matter is managed under martial administration."

Mahmoud, Al-Saud. (1990). *The legislative jurisdiction of the head of state in exceptional circumstances*, University Culture House, Cairo: 283.

The decision was issued by the Council of Ministers, stating that "in view of the serious emergency that the country is going through in the present circumstances, it is considered with it that the measures and procedures currently in place under the Defense Law in accordance with Article 124 of the Constitution are insufficient to defend the Kingdom, and based on Article 125 of the constitution. The Council of Ministers decides to petition His Majesty the King in accordance with his constitutional powers in accordance with the first paragraph of Article (125) of the aforementioned constitution to declare martial law throughout the kingdom as of today April 25, 1957. Ali K. Shatnawi, *Principles of Jordanian Administrative Law, op.,cit.*, : 751.

Nu'man Al-Khatib, *op.,cit.*, 155.

The Jordanian bar Association Magazine, Supreme Justice, (1967): 47.

Ahmed, M.A. (1978). *The theory of exceptional conditions, a comparative study in France and Egypt*. The Egyptian General Book Authority: 125.

The Egyptian Constitutional Legislator of 2014 organized the declaration of a state of emergency in Article (154) which states that "the President of the Republic, after consulting the cabinet's opinion, declares the state of emergency in the manner organized by law, and this declaration must be presented to the House of Representatives within the next seven days. To decide what he thinks about it. If the announcement takes place outside the regular session, the council must be called to convene immediately to present it. In all cases, the majority of the council's members must approve the declaration of the state of emergency, and its announcement is for a specific period not exceeding three months, and it is not extended except for another similar period, after the approval of two-thirds of the members of the House. If the House is not in existence, the matter is submitted to the Council of Ministers for approval, provided that it is presented to the new House of Representatives at its first meeting. The House of Representatives may not be dissolved while the state of emergency is in effect.

Numan Al-Khatib, *op., cit*: 148-149

Al-Sanawi, S.M. (2005). *The political role of parliament in egypt*. Dar Al-Nahda Al-Arabiya, Cairo: 69.

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Ali K. Shatnawi, *The Jordanian Administrative Court*, previous reference: 123.

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The first paragraph of Article (8) of the Jordanian Defense Law states that "Any person who has been arrested or detained pursuant to this law or any defense order or his money was seized or put hand it under his supervision or any stakeholder on behalf of the aforementioned person to appeal.

Jordan Bar Association Journal, Supreme Court of Justice ruling, 87/115.

Supreme Court of Justice, *Jordan bar Association Journal*, (1953): 91. Mentioned in, Ali K. Shatnawi, (1996) *Principles of Jordanian Administrative Law, Book Two, Administrative Activity*, University of Jordan Publications, Amman, 575.

Hassan. (2011). *Constitutional law with an explanation of the constitutional system of the united arab emirates, (First Edition)*. Dar Al-Afaq Publishing and Distribution, United Arab Emirates,:33

Article (4) of the Jordanian Defense Law states that "The Prime Minister shall exercise the following powers: A- Establish restrictions on the freedom of persons to meet, move and reside, and arrest and detain suspects or those who pose a threat to national security and public order. B - Assigning any person to perform any act or perform any service within his capacity. C - Searching persons, places and vehicles without being bound by the provisions of any other law and ordering the use of appropriate force in case of objection. D- Placing

possession of movable and immovable property and postponing debt fulfillment and due obligations. E- Preventing, restricting or limiting the import, export, or transfer of materials from one place to another and limiting dealing with them, prohibiting their concealment, destruction, buying or bartering on them, and fixing their prices. F- Seizing any land, building, road, or water and energy source, establishing defense-related works on them, removing any trees or facilities on them, and ordering their management, exploitation or regulation of their use- evacuating or isolating some areas and imposing curfew in them. H- Determining the opening and closing times of all or some of the public shops. I- organizing and determining means of transport and transportation between the different regions, closing any road or waterway or changing its direction and preventing traffic on it or organizing it. J- Monitoring letters, newspapers, publications, leaflets and drawings and all means of expression and advertising before publishing, seizing, confiscating, disrupting them, and closing places of their releases. Prohibiting taking pictures or making designs or maps for any place or a particular thing that might benefit the enemy, and preventing any photographic equipment or materials for making pictures, designs and maps near these places and things, and preventing staying or being late in such places without a legitimate excuse. L- Cancellation of licenses for firearms, ammunition, explosives, and explosive materials, or those that are used in the manufacture of explosives, to prevent their manufacture, sale, purchase, transfer, or disposal, order their delivery and seizure, and close their selling and storing stores. M- Preventing the manufacture, sale, purchase, or possession of telecommunications equipment and ordering their delivery and seizure.

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