

# Exceptional Circumstances as a Limitation on the Principle of Legality a Comparative Study

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## Abstract

*This research examines the state of emergency as a restriction on the principle of legality, through a comparative study of the French and Egyptian legal systems, with reference to the legal framework in the Sultanate of Oman. The study begins by establishing the principle of legality as a cornerstone of the rule of law, requiring all state authorities to be subject to legal rules. It then explores the exception permitted by exceptional circumstances, which arises when the state faces grave dangers that cannot be addressed through ordinary legal provisions. The research outlines the doctrinal and Islamic jurisprudential foundations of this theory, the position of administrative courts regarding its Practice, and the distinction between exceptional circumstances and acts of sovereignty. It further highlights the safeguards that prevent the misuse of exceptional powers, foremost among them judicial oversight, and sets out the criteria that balance security requirements with the protection of rights and freedoms. The study concludes with a set of recommendations to strengthen the legislative and regulatory framework governing exceptional circumstances in Oman, in line with constitutional principles and international obligations.*

**Keywords:** *Principle of Legality, State of Emergency, Judicial Oversight, Sultanate of Oman, Comparative Law.*

## Introduction

The French Council of State invented the theory of State of Emergency in order to allow administrative decisions issued by the executive authority to confront these circumstances to be considered legitimate, despite the defects that taint them and make them illegitimate in normal circumstances.

When establishing this theory, the French Council of State had in mind that the administrative authority's commitment to maintaining public order and ensuring the regular operation of public facilities requires expanding its authority and freedom from the legal restrictions imposed by the principle of legality in order to overcome these circumstances. the beginning of the **Practice** of this theory and its highlighting in the rulings of the French Council of State was during World War I, when it found that the circumstances of war required giving the executive authority broader powers in order to confront the difficulties, problems and crises that resulted from it.

Talking about exceptional circumstances requires addressing the principle of legality, which requires that all administrative actions be within the limits of the law: the law here is taken in its general sense, i.e. all binding rules in the state, whether written or unwritten, and whatever their source, taking into account the gradual progression of their force (constitutional law, ordinary law, regulation, individual decision) and whatever the type of administrative action, i.e. whether its work is legal or material. Al-Tamawi, S. M. (1961). When the administration carries out its activities, it may sometimes resort to using the means of public authority, which may expose it to the freedoms of individuals, affect their legal positions, harm their persons and money, and may misuse these exceptional means available to it, such as by using them for purposes that are closely related to the public interest, or by deliberately wasting the rights of individuals or harming their freedoms.

This necessitates establishing sufficient guarantees to protect them against the administration, and the necessity for it to be subject to the provisions of the law in all the work it does or uses in terms of privileges.

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These guarantees aim to achieve a fundamental goal, which is to ensure that the actions and material work of the legal administration are in accordance with the law, to ensure their legality, to nullify them when unlawful, and to provide compensation.

1. This confirms respect for what is known as the "principle of legality," which means the rule of law, i.e. the subjection of the ruler and the ruled to the rules and provisions of the law. Abdel Fattah, A. (n.d.).

The rule of law means that the legal rule comes above the will of all individuals, rulers or ruled, and obliges them all to follow its provisions. If they do not adhere to the legal rule, their action is considered illegal and unlawful. The law is what governs the actions of all state authorities and determines their powers and the scope in which they operate, so that if one of them exceeds that scope specified for it, its action does not have any legal effect, and its action is considered a type of usurpation or exceeding of authority.

2. This is what is expressed by the principle of the "rule of law," which is its firm guarantee of the principle of the legality of the actions of all state authorities. Mujahid, A. I. (n.d.).

To implement the principle of legality and put it into practice, it is necessary to identify the judicial body competent to hear cases related to legality. Two systems have emerged: the unified judicial system, where the ordinary judiciary is competent to hear all disputes, including administrative disputes, and the dual judicial system, where the ordinary judiciary is competent to hear all disputes except administrative disputes, while the administrative judiciary (the Administrative Judicial Court) is competent to hear administrative disputes.

On the other hand, implementing the principle of legality requires a penalty report for violating it, which includes a report on the possibility of canceling the illegal act, as well as compensation for the damage resulting from it. This requires studying the provisions of both the annulment lawsuit and the compensation lawsuit, in addition to the provisions of the disciplinary lawsuit. Raslan, A. A. (1999).

Based on the above, we separate the topics of the scientific paper as follows:

First: Reasons for choosing a scientific paper there are many reasons why I should research the topic of exceptional circumstances as a restriction on the principle of legality, a comparative study.

These reasons are: -

1. Understanding the concept of the principle of legitimacy and the basis on which it is based
2. Standing on the texts that regulate the principle of legitimacy in the Sultanate of Oman and in comparative systems.
3. Explaining the concept of what exceptionalism is, its causes, and ways to confront it.
4. The positive addition that the researcher can provide in the subject of this paper to enrich the legal library.

*Second: The Importance of the Topic of the Scientific Paper*

This paper has theoretical importance in explaining the texts on which the regulation of the principle of legitimacy is based and the restrictions imposed on it in the Sultanate of Oman and comparative systems, in addition to practical importance in identifying the practical Practices aspect of the principle of legitimacy and exceptional circumstances through realistic Practices of the theoretical principle.

*Third: The Problem Discussed in the Paper*

Is scientific the problem of the study in this scientific paper lies in answering the questions raised by exceptional circumstances as a restriction on the principle of legitimacy, which are: What is the concept of

the principle of legitimacy? What are the foundations and principles on which it is based? What are the sources that frame the principle of legitimacy? What are the reasons for deviating from the principle of legitimacy? What are the challenges facing the departure from the principle of legitimacy? What are the effects of fully adhering to the Practice of the principle of legality? What is the concept of exceptional circumstances and their causes? What is the justification for exceptional circumstances to deviate from the principle of legitimacy, and what are the limits of this deviation?

#### *Fourth: Objectives of the Scientific Paper*

There are a number of objectives that the researcher seeks from this scientific paper, including: 1. Identifying the challenges facing the Practice of the principle of legitimacy in the Sultanate of Oman and comparative systems. 2. Highlighting the judicial Practice of the principle of legality under normal and exceptional circumstances. 3. Providing a comprehensive scientific study that contributes to clarifying the ambiguity of the concept of exceptional circumstances and is calm for dealing with them.

#### **Fifth: Scientific Paper Methodology**

In this scientific paper, we will follow the descriptive, analytical and comparative approach.

#### **Sixth: Literature Review**

First: A scientific paper entitled: The Theory of Emergency Circumstances, Its Nature, Theories, and Controls, presented by Professor Dr. Atef Al-Shatnawi and Atef Muhammad Faleh Khawaldeh to the International Journal of Humanities and Social Sciences, Issue No. 58, June 2024. The paper dealt with the definition of the theory of emergency circumstances and the conditions for implementing the state of emergency. It also talked about the traditional theories of exceptional circumstances, the theory of urgency, and the theory of sovereignty our approach to the topic of exceptional circumstances differs from this paper in that our research focuses primarily on the foundations of the principle of legitimacy and exceptional circumstances in the Omani system and comparative systems, and also addresses the applied aspect of the theory of exceptional circumstances.

Second: A scientific paper entitled The Theory of Exceptional Circumstances in Legislation, Jurisprudence, and the Judiciary, presented by Tahseen Jaafar Yahya Al-Rustam, Islamic University of Lebanon, Faculty of Law and Political Science, Department of Public Law. Under the supervision of Professor Dr. Khaled Al-Khair, published on July 1, 2024 in the Journal of Humanities and Natural Sciences this research examined the extent to which the theory of exceptional circumstances applies to management decisions under exceptional circumstances, and the extent to which it is subject to judicial oversight. The research reached several results, the most important of which is that among the most prominent exceptional systems adopted to confront the exceptional circumstances that threaten the state, and its people are the system of military martial law imposed in the event of war and its regions, and constitutional exceptional systems.

The study came out with several recommendations, the most important of which is the necessity for the Iraqi constitutional legislator to rely on adopting administrative judicial oversight because it falls within its jurisdiction. Our approach to the subject of exceptional circumstances differs from this paper in that our research focuses primarily on the foundations of the principle of legitimacy and exceptional circumstances in the Omani system and comparative systems, and it also addresses the applied aspect of the theory of exceptional circumstances.

Third: A paper submitted by Jabouri Ismail, Assistant Professor, Department "A", Faculty of Law and Political Science, University of Kasdi Merbah, Ouargla (Algeria), to the Journal of Political and Legal Notebooks, Issue Fourteen, January 2016. This article addresses the topic of the theory of exceptional circumstances through its origins and the historical circumstances accompanying this emergence, and also goes to extremes for its various definitions from the judicial and jurisprudential perspective as well as studying the Algerian constitutional texts that the state applies in the event of exceptional circumstances,

through which it aims to maintain public order and ensure the regular and continuous operation of public facilities. This study reached a number of results, including that applying the rules of ordinary legality under exceptional circumstances would seriously threaten security and public order.

Our approach to the topic of exceptional circumstances differs from this paper in that our research focuses primarily on the foundations of the principle of legitimacy and exceptional circumstances in the Omani system and comparative systems and also addresses the applied aspect of the theory of exceptional circumstances.

The nature of the principle of legitimacy and the conditions for its realization.

The concept of the principle of legality

There is no doubt about the importance and necessity of contemporary states adhering to the principle of legitimacy and respecting all the implications of adopting it, as commitment to legitimacy represents a fundamental guarantee of public rights and freedoms. There is no room to talk about public rights and freedoms without the state adhering to the law and being subject to its provisions Raslan, A. A. (1999).

Therefore, the meaning of legitimacy must be defined or what is meant by the principle of legitimacy must be defined. The principle of legitimacy - as mentioned above - means the rule of law, i.e. respect for its provisions and their Practice to both the ruler and the ruled. The law must govern the behavior of individuals, not only in their relationships with each other, but also in their relationships with the state's governing bodies.

The people who have the say in these bodies are nothing but individuals like others who are not infallible from error or slip. The power they have assigned to them for the public good may lead them to take away people's rights or abuse them. Power has an ecstasy that may mess with heads - how many rulers were wise until, when they seized power, they became tyrannical and tyrannical, and they confirmed with their actions and reality that absolute power usually entails absolute corruption.

Legitimacy assumes that the actions of state authorities and citizens are consistent with previously established rules. What is meant by the law here are all types of legal rules in the state, whether customary, judicial, or legislative, regardless of whether the latter are constitutional, ordinary, or subsidiary. The law generally applies to everyone. Helou, M. R. (2000).

The Basic Law of the State issued by Royal Decree No. 6/2021 affirmed the principle of legitimacy in Article (76) thereof, saying, "The rule of law is the basis of governance in the state".

3. Thus, it becomes clear that the principle of legitimacy means that rulers and ruled are subject to the law. In general, everyone residing in the state, whether individuals, institutions or bodies, is subject to the law, and whether those institutions and bodies are public or private. All state authorities are subject to the law in all forms of their activity. And the various actions and deeds that it issues this is given that the law creates an obstacle to every form of attack on human rights and freedoms. the legislative authority must submit to the law and carry out its function within the limits of its provisions and in the manner specified therein. The judicial authority is obligated to implement the law and may not violate its provisions. The executive authority must also respect the law and abide by its limits, whether in carrying out its governmental function or in performing its administrative function Al-Sanari, M. A. (n.d.).

4. If the decisions of the executive authority or administration exceed the rules of law, there must be an effective penalty. This penalty represents the possibility of canceling decisions that violate the law and compensating individuals for their damages if this requires it, in addition to compensating these individuals for the financial actions of the administration that violate legitimacy, but to whom can the authority to impose this penalty be assigned? That is the problem that this study addresses. it is the problem of oversight of public administration work. In addressing this problem, there is a fundamental fact: judicial oversight of the administration is the only effective way to ensure that administrative authorities respect the law. The

judiciary is the body that must monitor the decisions and actions of the administration and anticipate the penalty for invalidation or cancellation in the event of a violation of the law. But which judiciary? Is it the ordinary judiciary or an independent and specialized administrative judiciary?

There is no doubt in the opinion of the majority of public law scholars in France, Egypt, the Sultanate of Oman and many countries that the administrative judiciary, independent of the ordinary judiciary, is the most appropriate body to monitor the legality of administrative actions, briefly because of its specialization, because of its deep knowledge of administrative methods and means, and finally because of its ability to cancel and execute illegal administrative decisions, at least for Egypt and the Sultanate of Oman the ordinary judiciary does not have this possibility, and even if it were given to it, it is difficult to imagine the ease of exercising it given the long traditions of this judiciary. Abdelwahab, M. R. (2005).

### *Conditions for Achieving the Principle of Legality*

From what has been presented above, we can identify three conditions that must be met for the principle of legitimacy or the rule of law to exist and be achieved, meaning that if one of them fails, it cannot be said that there is a rule of law in the state. These three conditions are successive: adopting the principle of separation of powers, clearly defining the powers and competencies of the administration, and finally the existence of effective judicial oversight. We will discuss it briefly below:

#### *(1) Adopting the Principle of Separation of Powers:*

5. The credit for formulating this principle in an artistic way goes to the French philosopher (Montesquier), who detailed this principle in great detail in his book «The Spirit of Laws», which he published in 1748 AD. He distinguished between the legislative, executive and judicial authorities and explained the intended purpose behind this distinction and the unity of the functions that each of these authorities has, and he explained that this is a necessity for protecting individual freedoms and preventing the tyranny of the state. since Montesquais published his famous book, constitutions have begun to apply it to positive systems in a Practice that has varied according to the circumstances of each country.. Kamel, M. (1947–1948).

6. This principle means that there are three authorities in the state that are independent of each other, each with its own powers and tasks and the people responsible for managing them. Omani legislator took into account the principle of separation of powers in the Basic Law of the State, and decided to distribute the powers of these powers, as he explained in Chapter Four the powers and authorities of the President of the State, the Council of Ministers, the Prime Minister and his deputies, and the ministers as representatives of the executive authority chapter five also specified the composition of the Council of Oman (the Shura Council and the Council of State) as the basis of legislative authority, and finally Chapter Six specified the judicial authority and granted it complete independence from others.

#### *(2) Clear Definition of the Powers and Competencies of the Administration:*

The principle of legality or the rule of law cannot exist or be achieved under a system that does not define the scope of powers granted to administrative bodies. Restrictions must be placed on the exercise of these powers, otherwise the administration will become dominant and become the true sovereign without a law that stops and restricts it and protects the rights and freedoms of individuals from its arbitrariness.

The definition of the powers and competencies of the administration comes first from the statute (constitution), but the role of ordinary legislation issued by the legislative authority seems more effective as it is at the heart of the function of the legislative authority to issue laws regulating every activity in the state, and since the administration is always present everywhere, Parliament must always seek to set controls and limits for its privileges and competencies

The principle of separation of powers strengthens this idea, because legislation issued by a legislative authority independent of the executive authority and representative of the will of the people is in an appropriate position to impose whatever restrictions and limits it deems appropriate on the powers of the executive authority and its affiliated departments Abdelwahab, M. R. (2005).

In the Sultanate of Oman, Royal Decree No. 75/2020 regarding the state's administrative apparatus and its amendments define the competencies of the state's administrative apparatus units, in addition to the independent royal decrees for each unit, which include a definition of the competencies of the various ministries, agencies, and other government units.

(3) *The Existence of Effective Judicial Oversight:*

This third condition represents the only real guarantee of respect for legality or the rule of law. How important is the existence of constitutional or legal controls and restrictions on the activity and powers of administrative bodies if these executive bodies are not subject to a judicial body that monitors their respect for these controls and restrictions. However, judicial oversight must be effective, and this effectiveness must be achieved within a distinct judicial system that allows individuals to file appeals against the administration's actions and decisions, especially appealing the annulment against illegal decisions, and the judge shall, as a result of this appeal, annul those decisions if he finds that they are illegal. This effective judicial oversight is fully and appropriately achieved under an administrative judicial system independent of the regular judiciary. Abdelwahab, M. R. (2005).

This is what the Omani legislator was doing when he established the Administrative Court by Royal Decree No. 91/99, which was exclusively competent to adjudicate administrative disputes.

*Balancing The Principle of Legitimacy:*

Legitimacy is based on the existence of strict rules that the administration is obligated to respect and observe in its actions. It imposes restrictions on the administration in favor of individuals. However, the protection of individual freedom must not obscure from view the administration's need for a degree of freedom that guarantees good administration, because if it is necessary to avoid the tyranny of the administration:

This should not lead us to label management as a mechanism and routine, by ensnaring its men and instilling in them a spirit of innovation. For this reason, jurisprudence, the judiciary, and even the legislator grants the administration some privileges, aiming to balance the principle of legitimacy by granting the administration a degree of freedom that varies narrowly and broadly according to the circumstances.

These privileges crystallized in three forms: Al-Tamawi, S. M. (1961).

a) Discretionary power: This is the freedom that the administration enjoys in the face of both individuals and the judiciary, to choose - within the limits of the public interest - the time of its intervention, the means of intervention, and to assess the seriousness of some cases.

(b) War powers and exceptional circumstances: these are circumstances that lead to the expansion of the scope of ordinary rules of legality, so that unlawful actions in normal times become legitimate actions in the exceptional circumstances previously identified.

c) Acts of government or sovereignty:

It is the most dangerous administrative privilege of all, because it allows it to issue administrative decisions that it does not ask about before any judicial authority, as it is in fact a loophole in the scope of legitimacy. although legitimacy is a general principle that governs all the actions of rulers of all levels and varying situations, acts of sovereignty are a serious exception to the principle of legitimacy, as they are not subject to judicial oversight, although they are subject to political oversight in general. Raslan, A. A. (1999).

Jurisprudence and the judiciary have settled on defining the concept of acts of sovereignty as acts issued by the government as a ruling authority and not as an administrative authority. This means that acts of sovereignty are those carried out by the government as a public authority within the scope of its political function this includes work related to the state's foreign affairs, work related to war and measures related to the state's internal and external security, etc. Administrative work is carried out by the executive authority within the limits of its administrative function. Omani Administrative Judiciary. (2005, June 25).

however, the subject of our study will focus on exceptional circumstances as a constraint on the principle of legality.

What exceptional circumstances are

At the beginning of its emergence and adoption, the theory of exceptional circumstances was called the theory of war powers, based on the fact that it was applied in the context of the circumstances that usually accompany wars. However, due to the generality of the theory and the fact that it can be applied in other cases that the state may face other than the circumstances of war, jurisprudence and the judiciary have tended to call it «the theory of exceptional circumstances Raslan, A. A. (1999).

The theory of necessity and exceptional circumstances is the second means of balancing the principle of legitimacy. If the principle of legality requires the administration to adhere - in the actions and behaviors it takes - to the provisions of the laws and not to violate them, and for its actions and behaviors to be based on a legal rule that permits them, then the question arises as to whether the administration remains literally committed to what this principle imposes on it in all circumstances and situations or can it be temporarily freed from submission to it if unusual and abnormal circumstances arise that require accelerating the adoption of the necessary measures to protect the security of the state, its public order and its basic facilities from the risks that threaten it and to the extent required by these new emergency circumstances. In other words, the question arises as to whether the administration is committed to submitting to the principle of legitimacy in exceptional circumstances Al-Sanari, M. A. (n.d.).

What exceptional circumstances are and their Practices.

According to this theory, if serious incidents occur in the state or in a region thereof, such as a state of war, severe disturbances that threaten internal security, or the spread of a very serious epidemic, the administrative powers expand and increase beyond the limits set by the rules of normal legitimacy so that the administration can more freely take the necessary measures to confront these circumstances. The rules of ordinary legality change their content and substance to be replaced by exceptional legality that gives the administration powers that are far-reaching and deeper than what the rules of ordinary legality allow Abdelwahab, M. R. (2005).

It is accepted that laws and regulations were established in order to confront and apply them in the normal circumstances of the group, and in such circumstances the administration is committed to applying existing laws and regulations, and does not have the right to deviate from them in its actions and deeds, otherwise its actions that violate the law will be considered invalid. However, exceptional emergency circumstances may arise, such as war, earthquakes, volcanoes, floods, disasters.

These circumstances cannot be confronted by the administration in accordance with the provisions of ordinary legislation and following its long methods and procedures. This would disrupt interests, halt the operation of public facilities, and spread chaos, which could endanger the existence of the state. Therefore, in such circumstances, the administration is allowed to deviate from the applicable rules of law, and the scope of the rules of legality is expanded so that illegal acts under ordinary circumstances become legitimate acts in exceptional circumstances. Abdel Fattah, A. (2009).

However, to apply the theory of exceptional circumstances, it is not necessary for the exceptional circumstance to be represented by a public disaster - God forbid - such as a war or a general epidemic. Rather, it is sufficient for a serious threat to one of the public interests and facilities in the state to occur,

which would lead to an interruption in the operation of the public facility or a severe disturbance of security. Abdelwahab, M. R. (2005).

The concept of exceptional circumstances theory:

The theory of exceptional circumstances does not mean that administrative actions issued in these circumstances escape absolute submission to the rules of legality, so that the administration acts as it wishes without control or standard. Rather, it means expanding the rules of legitimacy or replacing the rules of exceptional legitimacy with the broader powers they grant to the administration, with the rules of ordinary legitimacy that do not enable the administration to perform its duties under exceptional circumstances. In this respect, this theory differs from the theory of acts of sovereignty, in which the principle of legitimacy is set aside, and all judicial oversight disappears. In this regard, the Egyptian Supreme Administrative Court «says that confronting the exceptional circumstance would give (the administration) broad freedom to estimate the measures and procedures that must be taken pursuant to a discretionary authority that differs in its extent, not in the necessity of extending oversight over it from the discretionary authority it enjoys. In normal, familiar circumstances Helou, M. R. (2000).

The Supreme Administrative Court in Egypt explained the concept of the theory in one of its rulings, as follows: “legislative texts were designed to govern normal circumstances. If exceptional circumstances arise and the administration is forced to implement normal texts, this inevitably leads to unpalatable results that even contradict the intention of the authors of those normal texts. Laws stipulate the procedures that are taken in normal circumstances, as long as there is no provision in them for what must be done in the event of urgent danger, the administrative authority must then be empowered to take decisive measures that have only served the public interest. It goes without saying in this regard that there is a rule that regulates all laws and their superiority, the result of which is the necessity of preserving the state. The purpose of the principle of legitimacy requires, first and foremost, working to preserve the state, which entails authorizing the government to make an exception, and in the event of necessity, from the authorities what allows them to take the measures required by the situation even if you violate that law in its verbal meaning, as long as you seek the public good». .Raslan, A. A. (1999).

It is clear from the above that the idea of exceptional circumstances can be due to two reasons: the first reason - the survival and continuation of the state: there is no room to talk about the principle of legitimacy, respect for the law, and adherence to its provisions except with the existence and continuation of the state. If something happens that threatens the existence of the state itself, the goal that must be achieved is to preserve the survival and continuity of the state, and then it becomes necessary to ease the restrictions of normal legitimacy to confront the unusual circumstances that threaten the survival of the state itself, Because the safety of the people is the supreme law that must prevail over any law, the law is a means of regulating the life of a free people under a state that establishes this law and whose various authorities - including the administration - are obligated to respect it and act in accordance with its provisions. If the very existence of the state becomes threatened, it is necessary to preserve the survival of the state and ensure its continued survival by relaxing the rules of ordinary legality that were established to ensure the survival of the state, on the one hand, and to guarantee public rights and freedoms, on the other hand. Raslan, A. A. (1999).

The second reason - changing circumstances: it is well known that legal rules have been established to govern normal circumstances. If unusual circumstances arise, such as wars, crises, and emergency disasters, it is necessary to take the necessary measures to confront these circumstances. These measures are not within the scope of the rules of normal law - and therefore it is necessary to give the administration the necessary powers to confront these emergency circumstances.

The rules established to govern ordinary circumstances are not suitable for confronting extraordinary circumstances. An ordinary rule governs ordinary circumstances, and emergency or extraordinary circumstances must be governed by extraordinary rules that enable these circumstances to be confronted and controlled, in order to achieve the public interest.

Therefore, jurisprudence and the judiciary, whether in France, Egypt, or the Sultanate of Oman, have settled on adopting the theory of necessity or exceptional circumstances, thus expanding the scope of the principle of legitimacy. The general origin of the theory of exceptional circumstances is «necessity», which is an Islamic origin, in Practice of the fundamentalist rule «necessities permit prohibitions», and necessity is estimated according to its extent. Raslan, A. A. (1999).

The legislator may anticipate a state of necessity or exceptional circumstances and regulate them with legal rules in advance. Here, these rules must be adhered to when the conditions for their Practice are met. An example of this in France is the Martial Law Act of 1849, amended in 1878, 1916, and 1944, the Law of July 11, 1938, regulating the organization of the state in a state of war, and the Law of Emergency of April 3, 1955, which was designed to confront the unrest in Algeria before its independence in 1962.

An example of this in Egypt is the system of necessity regulations that was stipulated in successive Egyptian constitutions and was stipulated in Article 147 of the 1971 Constitution, and the system of martial law that was stipulated in Articles 45 and 144 of the 1923 Constitution, Article 144 of the 1956 Constitution, and Article 148 of the 1971 Constitution. as well as the Martial Law law issued in 1923, which was replaced by Law No. 533 of 1954, then Law No. 162 of 1958 regarding the state of emergency, Law No. 148 of 1959 regarding civil Défense, and Law No. 87 of 1960 regarding general mobilization.

The general rule is that the administration adheres to the legal rules established by the legislator to confront exceptional circumstances, if any. In the absence of such rules, the administration's powers expand to confront exceptional circumstances, provided that it adheres to the goal of the public interest and takes the necessary measures necessary only to confront the situation, provided that all of this is done under judicial supervision. Raslan, A. A. (1999).

As for the Sultanate of Oman, according to the text of the second paragraph of Article (49) of the Basic Law of the State No. 6/2021: The Sultan shall carry out the following tasks and powers: – "Taking rapid measures to confront any danger that threatens the safety of the State, its territorial integrity, or the security and interests of its people, or hinders State institutions from performing their duties." Article (90) of the Basic Law of the State also stipulates that: No provision of this system may be suspended except during a state of emergency, and within the limits specified by law.

Practices of the theory of exceptional circumstances the French Council of State invented the theory of exceptional circumstances to confront the emergency circumstances to which society is exposed and so that the public authorities in the state can control the situation and manage the country's affairs under those circumstances. this theory requires that the existence of an exceptional circumstance results in the legitimacy of all actions taken by the administration in those circumstances. Al-Sanari, M. A. (n.d.).

However, given the seriousness of the powers enjoyed by the administration based on this theory, which lead to infringement on the rights and freedoms of individuals, the French judiciary, as well as the Egyptian judiciary, did not leave the issue without definition and organization, but rather set conditions and limits for the possibility of establishing and applying the theory. He stipulated that there be several conditions in order for it to be possible to say that the administration is facing an exceptional circumstance or a state of necessity, and then the administration in this case has broad powers to confront this exceptional circumstance.

However, if one or more of these conditions are not met, the administration in this case is not in a state of necessity and therefore cannot use these broad powers. Al-Sanari, M. A. (n.d.).

In short, to apply the theory of exceptional circumstances, there must be an immediate or potential danger that cannot be confronted by ordinary legal rules in order to preserve the public interest. the administrative judiciary has established the rules and regulations that govern the conduct of the administration under exceptional circumstances. Expanding the rules of ordinary legality or implementing exceptional legality requires the availability of several conditions, which are: the first condition - the presence of a serious danger threatening public order:

To apply the theory of exceptional circumstances, an unusual or unusual real situation must arise, representing a serious threat to public order.

Examples include war, internal unrest and civil war, earthquakes, volcanoes, and other natural disasters, or general strikes that regularly and steadily threaten the operation of public facilities. This condition is met whether these events actually occurred or were likely to occur. It is also not necessary for these events to include the entire territory of the state. Rather, they may occur in a part of the territory and threaten the entire territory, thus imposing an emergency on the entire territory. However, if their effects are limited to the part in which they occurred, then a state of emergency or exceptional circumstances shall apply to that part only. In all cases, the existence and seriousness of the danger is a matter of reality, subject to the discretion of the judiciary. The judiciary is the one that assesses the existence of the danger, and it is also the one that assesses the seriousness of this danger. Raslan, A. A. (1999).

If there is no such circumstance that justifies deviating from the normal rules of legality, the reason for the exceptional actions taken by the administration will disappear. Helou, M. R. (2000).

The second condition - the risk cannot be paid according to normal legal rules: Meaning that the legal means at the administration's disposal are unable to confront the situation and eliminate the imminent danger. In this case, the administration bypasses normal means of legitimacy and takes appropriate, rapid action that enables it to overcome the current danger. Al-Sanari, M. A. (n.d.).

A serious danger to public order may occur, but it can be met by ordinary legal rules, so the theory of exceptional circumstances does not apply. Because the Practice of this theory requires that the risk cannot be confronted or repelled by ordinary legal rules, only in this case may the administration use exceptional rules to confront exceptional circumstances.

The general rule in this regard is that the administration must confront the serious danger in accordance with the rules and methods of ordinary law. If this danger cannot be averted by the rules of ordinary law, it may take the necessary measures to confront it in violation of the rules of ordinary law. This issue is a matter of facts or subject matter and is also subject to judicial oversight. To estimate in each individual case whether or not management can confront the serious risk with normal rules. If the normal rules are abandoned, which the judiciary has determined were sufficient to confront the serious danger, the administration's action is unlawful and exposes it to liability. Raslan, A. A. (1999).

The third condition - achieving the public interest:

The administration's objective in carrying out the exceptional action must be to protect public order and ensure the operation of public facilities, or in other words, to protect the public interest. However, if the administration deviates from this and acts based on personal motives or personal interests, without regard for the public interest, its action will be tainted with the defect of deviation. If the legitimacy of this action is challenged before the judiciary, it will have the authority to rule to cancel it or compensate for the resulting damages. Abdel Fattah, A. (2009).

The Egyptian Supreme Administrative Court ruled in this regard that "the government's authority in the field of exceptional circumstances is undoubtedly not free from all restrictions but rather is subject to principles and controls. A realistic or legal situation must arise that calls for intervention, and the government's action must be necessary for this situation as the only means to confront the situation, and the government's leader in this action must be seeking the public interest." Thus, such actions are subject to judicial oversight. However, the basis in this case is not based on verifying the legitimacy of the decision in terms of its conformity or non-conformity with the law, but rather on the basis of the availability or non-availability of the controls mentioned above. If the government's lead in this action is not the public interest, but rather it is directed towards achieving a private interest, for example, then the decision in this case is invalid Abdel Fattah, A. (2009).

Fourth condition: The administration must not sacrifice the interests of individuals for the sake of the public interest except to the extent necessary. This condition requires that the administration not be arbitrary in its procedures and take into account foresight and caution. Therefore, if the administration has several means to achieve the same goal, it must choose the least harmful to individuals, because the general rule is that necessity is valued according to its value. In any case, this condition is flexible and is assessed by the judge according to the circumstances, and its effect is concentrated in the award of compensation in the event of the administration's arbitrariness or lack of foresight Al-Sanari, M. A. (n.d.).

In any case, the issue of the inability to repel the danger by normal means, the necessity of resorting to exceptional means, and the necessity of the procedure being proportionate to the danger is a matter of reality. The administration is subject to judicial oversight to determine in each individual case whether the administration was unable to repel the danger by normal means or not. If the judiciary finds that the administration could have confronted the danger in a normal manner or that the action taken was not at all proportionate to the exceptional circumstance, it shall rule that the administration's action is unlawful. Abdel Fattah, A. (2009).

This was confirmed by the Supreme Administrative Court in Egypt when it ruled that "... Although the administration originally had the freedom to weigh work occasions and assess the importance of the consequences that result from established facts, when the occasion of administrative work is mixed with legitimacy and when this legitimacy depends on a good assessment of matters, especially with regard to public freedoms, the administration's intervention must be for serious reasons that justify it, as this is the basis and case for the legitimacy of the decision taken by the administration it is that the action must be necessary to confront certain cases of pushing a serious danger that threatens security and order, considering this measure the only means to prevent this harm, and the administrative judiciary has the right to monitor the occurrence or non-occurrence of this justification. If the reasons justifying this intervention are proven serious, the decision will be immune from any appeal. But if it turns out that the reasons were not serious, and there was no real importance in them, Jesus did not intervene, then the decision was invalid Abdel Fattah, A. (2009).

Fifth condition: The exceptional management authority ends with the end of the exceptional circumstance:

7. The transfer of exceptional powers by the administration is due to the seriousness of the exceptional circumstance. If this circumstance ends, the administration must follow the normal rules of legality. The exceptional authority of the administration revolves in existence and non-existence with the exceptional circumstance that is the source of danger. Where the exceptional circumstance exists, there is the exceptional authority of the administration, and where the circumstance ends and its danger disappears, the exceptional authority of the administration ends. Therefore, the administration's action must accordingly be subject to the rules of ordinary legitimacy. Abdel Fattah, A. (2009).

Summary of the above conditions: all of the above-mentioned controls were clarified by the Supreme Administrative Court in Egypt, which ruled that "protecting the principle of legitimacy requires, first and foremost, working to preserve the state, which entails granting the government an exception and, in case of necessity, the authorities to allow it to take the measures required by the situation, even if it violates that law in its crude meaning, as long as it seeks the public interest." However, the government's authority in this area is undoubtedly not free from all restrictions, but is subject to principles and controls a realistic or legal situation must arise that calls for intervention, and the government's action must be necessary to confront this situation as the only means of confronting the situation, and the government must be the leader in this action for the sake of the public interest. Thus, such actions are subject to judicial oversight, but in this case the basis is not based on verifying the legitimacy of the decision in terms of its conformity or non-conformity with the law rather, it is based on the availability or non-availability of the controls mentioned above. If the government's lead in this action is not the public interest, but rather it is directed towards achieving a private interest, for example, then the decision in this case is invalid Al-Sanari, M. A. (n.d.).

Administrative judiciary oversight of administrative authorities under exceptional circumstances.

The effect of exceptional circumstances - as we have seen - is to expand the powers and capabilities of the administration to act, in a way that makes it take unusual decisions and procedures that are permitted by the administrative judiciary and considered legitimate, while those decisions and procedures are illegal under normal circumstances because they violate the rules of traditional legitimacy.

If the theory of exceptional circumstances had stopped only at this point, it would have become a threat to the freedoms and rights of individuals, because it is not difficult for the executive authority to use imaginary difficulties as an excuse in order to benefit from the expansion of its powers. Also, assuming the realization of real exceptional circumstances, the administration may become more aggressive and infringe on the freedoms of individuals than necessary or work to use its exceptional powers despite the end of the difficult circumstances that justified it. In addition, finally, the content of the exceptional circumstance is not always determined according to a precise general standard: if the circumstances of war or disasters and general crises are clear in their meaning of exceptional circumstances, the administrative judiciary expands on the meaning of the exceptional circumstance – as we have seen - according to each special case separately, guided by the idea of the extraordinary difficulty that the administration has encountered, in the face of which natural and ordinary legal authorities are of no use.

The issue, as we see it, is discretionary, and the standard is not strictly disciplined, and this includes the danger of misusing the theory of exceptional circumstances this is why administrative judiciary oversight of administrative powers in exceptional circumstances comes in order to achieve the necessary balance for this theory. In contrast to the extraordinary powers by which the administration is freed from the rules of ordinary legality, there is oversight by the administrative judiciary (the Council of State) over the existence of the exceptional circumstance and the suitability of the administration's procedures to this circumstance. The two elements are inevitably complementary and together they outline the true content of the theory. Abdelwahab, M. R. (2005).

This control is achieved by ensuring that the conditions mentioned in the previous requirement are met. The general rule that can be said in this regard is that the effect of exceptional circumstances is represented by the administration's commitment to the goal and reason pillar in all actions issued to confront exceptional circumstances, so that it must always aim to achieve the public interest on the one hand, and its action must be based on a realistic or legal reason that justifies this action, so the judiciary monitors the physical existence of the reason and monitors its legal adaptation on the other hand. As for the jurisdiction element, the administration may - under the supervision of the judiciary – deviate from this element to confront exceptional circumstances, an example of which is the case of the actual employee, where the judiciary decides the integrity of the actions of the actual employee due to the necessity of the regular and continuous operation of public facilities in exceptional circumstances Raslan, A. A. (1999).

The administration may also - under judicial supervision - deviate from some rules of form or procedures to confront exceptional circumstances.

The judiciary also authorized the administration under its supervision:

- Refraining from implementing some judicial rulings.
- Suspension of some disciplinary guarantees.
- Temporary seizure of some properties.
- Stop publishing some newspapers.

However, all of this is done under the supervision and discretion of the judiciary, and on the condition that a state of grave danger arises that requires a violation of the normal rules of legitimacy, and that the administration's intervention in the manner in which it intervened is necessary and necessary to confront this danger, and that the administration's intervention is limited to confronting this emergency circumstance

only and does not extend beyond it to anything else, otherwise its action is considered a violation of legitimacy. Raslan, A. A. (1999).

### **First: Results**

1.The principle of legitimacy is a fundamental rule of good governance it is embodied in the subjection of rulers and ruled to the law, which is the fundamental guarantee for the protection of public rights and freedoms, and is achieved through the separation of powers, a clear definition of administrative powers, and effective judicial oversight.

2.Exceptional circumstances are a temporary exception and not a rule its purpose is to enable the administration to confront serious dangers (war, disasters, unrest, epidemics) when ordinary legal rules fail to do so, while maintaining this exceptional authority within the limits of necessity and under judicial supervision.

3.The jurisprudential and legal origin of the theory the theory of exceptional circumstances is based on the principle that "necessity permits prohibitions" and "necessity is valued to its extent", which makes it rooted in Islamic jurisprudence along with judicial development in France and Egypt.

4.The fundamental difference between it and acts of sovereignty exceptional circumstances do not abolish judicial oversight, but rather expand the scope of legitimacy, while acts of sovereignty completely exclude such oversight

5.Judicial oversight is a guarantee against arbitrariness the judiciary has the final say in assessing the availability of the conditions for an exceptional circumstance, the extent to which the danger cannot be confronted with normal rules, and the administration's goal of the action taken.

6.Legal regulation in the Sultanate of Oman

The Basic Law of the State explicitly stipulates the powers of the Sultan to confront risks that threaten the safety of the state, and the permissibility of suspending some provisions in the event of an emergency within the limits specified by law, which provides a legal framework for applying the theory.

7.Possibility of abuse granting broad powers in exceptional circumstances may lead to a violation of rights and freedoms if legal controls and judicial oversight are absent, which makes careful control of these powers necessary.

### **Second: Recommendations**

1.Establishing a detailed legislative framework for the state of emergency in the Sultanate of Oman it includes a precise definition of exceptional circumstances, the conditions for declaring them, the powers granted during them, and guarantees for their termination.

2.Strengthening administrative judicial oversight by enabling it to examine all decisions and actions issued during exceptional circumstances, to ensure that they comply with the limits of necessity and the public interest.

3.Determine a maximum time period for an emergency linking its extension to the approval of a legislative or regulatory body, to prevent its continuation without justification.

4.Ensuring fair compensation for any damages caused to individuals or institutions as a result of exceptional decisions or procedures, if they are later found to be unlawful.

5.Pre-training for administrative and security agencies

To manage crises within the framework of the law, to ensure that exceptional actions are considered and consistent with legal standards.

6. Alignment with international obligations especially with regard to human rights during the declaration of a state of emergency, ensuring that national legislation does not conflict with ratified international treaties.

7. Raising public awareness by spreading the legal culture related to rights and duties in exceptional circumstances, so that this stage is not misunderstood or misused.

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