

# Oversight of necessity regulations in the parliamentary system

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## Abstract

During the absence of Parliament, the life of the state may be exposed to unusual circumstances that pose a threat to its existence and the available legal means are unable to address them. Therefore, it was necessary to find a legal organization to preserve the entity of the state by giving the head of state the right to issue decisions that have the force of law and the possibility of taking appropriate measures to preserve the entity. The state and called them (necessity regulations).

Oversight of the constitutionality of the regulations of necessity is the sure guarantee of the principle of legality, and it is also one of the guarantees of the supremacy of the constitution. from legitimate sources. This oversight in the parliamentary system is more effective and stable, as it protects the rights of individuals from texts that violate the constitution, and this oversight is in essence legal oversight, given that it does not go beyond the scope of research and investigation whether the law was issued by a competent authority that the constitution drew for it And this oversight can be exercised by Parliament or by the judiciary, so we will divide this study into two branches. In the first section, we will deal with parliamentary oversight over necessity regulations, and the second branch will be devoted to judicial oversight over necessity regulations.

## Keywords

Initial systems; legal systems; Law;

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## Introduction

### First branch

#### Parliamentary Oversight of Necessity Regulations

The feature of oversight over necessity regulations seems to be that they are issued in the absence of Parliament and that they are issued in an exceptional period or a specific crisis with which it is difficult to comment on legislative decisions taken by the head of state, and Parliament must verify that the necessary legislation does not deviate from the provisions of the Constitution, which calls for its intervention against those who He performs these legislations in his absence if they are issued in violation of the law or the constitution.

Article (16) of the French Constitution of 1958 referred to the part of this oversight when it forbade the executive authority to dissolve the National Assembly during the work of this article, and it is one of the essential guarantees for the oversight of Parliament, its meeting with the force of law when declaring a state of necessity, as it can reconsider the decisions of the president immediately Issuance of it or thereafter, and thus Parliament establishes permanent control over the powers of the President of the Republic and has the authority to examine the conditions of work in Article (16) to see if they are met or not?

The Pakistani constitution of 1973 referred to explicit and clear control. If the National Assembly is not in session, the President of the Republic may issue a decree that has the power of laws, provided that it is presented to both Houses if it does not include financial matters, and to the National Assembly only in financial matters. One hundred and twenty days or before that period if the National Assembly or one of the two chambers issues a decision rejecting it before the expiry of that period (Obaid, 2013).

The Egyptian Constitution of 2014 authorized the President of the Republic to issue decisions by-laws if the House of Representatives is not in place and something happened that necessitates speeding up a decision that cannot be delayed, and stipulated that they be presented to the new Parliament within (15) days to discuss and approve them. urgent to present the matter to him, which indicates that issuing necessity regulations and assessing the state of necessity is a common matter between the legislative and executive authorities in the Egyptian Constitution of 2014.

And that the assessment of necessity is left to the executive authority to undertake it under the oversight of Parliament, as stated in the text of Article (156) of the Egyptian Constitution of 2014, which stipulates that ... the President of the Republic may issue decisions with laws that are presented, discussed, and approved... It is clear from this constitutional text that the President of the Republic when he is appointed in case of necessity and issues decisions with laws, are subject to Parliament's discussion and then approval (El-Gamal, 2005).

The Kuwaiti Constitution of 1962, in Article 71 of it, permitted the Emir to issue decrees that have the force of law if something happened between the sessions of the National Assembly or during the period of its dissolution that necessitates expediting the adoption of measures that cannot be delayed. The date of its issuance and retroactively and cancelled all legal consequences that resulted from it. In this way, it agrees with the Egyptian Constitution of 2014, which results in the failure to submit the regulations to Parliament or their failure to be approved by the latter to nullify them retroactively, except that the retroactive demise of the law's force on the regulations of necessity leads to a disturbance in the legal centres as we mentioned earlier, and therefore the Jordanian Constitution of 1952 tried to avoid this when it stipulated that these regulations cease to have an effect, provided that this does not affect contracts and acquired rights (Fahmy, 1980).

The Iraqi legislator dealt with parliamentary oversight of necessary legislation in Defense of National Safety Order No. 1 of 2004 in Article (9/First), which stipulates that (...the Interim National Consultative Assembly has the right to monitor the implementation of these procedures), as it was Replacing the Interim National Assembly with Parliament in the Iraqi Constitution of 2005.

When a simple comparison is made between parliamentary oversight on delegating regulations and parliamentary oversight over necessity regulations, we find that it is more effective on delegating regulations than on necessity regulations (Al-Tamawi, 2005; Lundberg, 1962), because the issuance of delegating regulations is done by law and while parliament is present, as opposed to issuing necessity regulations in the absence of parliament, which is A reason for

the importance of monitoring them, in addition to the nature of the exceptional circumstances and crises that are a reason for issuing them.

## Second branch

### Judicial oversight of necessity regulations

It seems that the constitutional oversight on the regulations of necessity is a prior control to prevent the constitutional violation before it occurs, because logic requires that it is better to prevent the issuance of unconstitutional legislation than to repeal it after its promulgation, than that the Constitutional Council in the French Constitution of 1958 has an advisory function before declaring the situation. The Supreme Constitutional Courts have comprehensive oversight of the constitutionality of laws and regulations without specifying or specifying whether the ordinary legislation issued by Parliament or the regulatory legislation issued by the executive authority, and it must be noted that the position of the French Court of Cassation differs in the matter of these regulations, as it considers this court, with regard to what these regulations were in terms of criminal punishment, came in violation of its provisions, as the court ruled more than once that the government (it is not permissible by decree to change the provisions of the existing legislation and that it cannot impose penalties as long as it is not authorized by law) (Al-Saleh, 1995).

About the oversight of the Council of State, decisions of the President of the Republic that fall within the scope of Article (34) of the French Constitution of 1958 are considered legislative decisions that are not subject to its oversight. As for decisions that fall within the scope of Article (37) of this Constitution, they are considered administrative decisions that do not acquire a nature. The law does not have its force and is subject to the control of the State Council like all other administrative decisions, but the Council, with the application of Article (16), adopted the objective criterion, as we mentioned earlier, to determine the legal nature of the work, to bring together the authorities in the hands of one body and for a specific period.

Whatever the case, the measures taken, such as Article (16) of the French Constitution of 1958, are subject to judicial oversight, as the constituent authority did not tend to reject every possibility of oversight of the powers granted to the president by this article except if they are considered legislative acts and the Council of State rules. In his oversight, whenever it comes to regulatory competence, and perhaps the judgment of the State Council on October 23 in the (Dorians) case is considered its pioneering judgment in this regard, in which it proved its control over government decisions in exceptional circumstances. The Council's oversight in this scope and the necessity of recognizing judicial oversight, and from this it is clear that the Council, in its previous ruling to cancel it, relied on the availability of the element of necessity when issuing the necessary regulations, in other words, it adopted the objective criterion (Othman, 2010).

As for the position of the Egyptian judiciary, the Supreme Constitutional Court simplifies its oversight overall regulations in addition to laws in the text of Article 192 of the Constitution, and that this broad jurisdiction of the Supreme Constitutional Court, which extends to all types of regulations, contradicts the objective of this oversight and is not consistent with what it decided. The Constitution is the competence of the State Council to settle all administrative disputes. Regulations are nothing but administrative decisions subject to the control of legality in the broad sense, whether the basis for challenging them is a violation of a constitutional text, an ordinary legislative text, or a higher-ranking regulation text.

In another ruling, the court was exposed to the state of necessity and the reasons calling for issuing the decision by law, as it ruled that Resolution No. 15 of the (8) judicial year on 7/9/1991 was unconstitutional by saying (since there was a clear preparatory work for the decision by Law No. 141 of 1981). With the liquidation of the situations arising from the imposition of guarding, the reasons that prompted its issuance in the absence of the People's Assembly are represented in what was mentioned in its explanatory memorandum that the administrative judiciary proceeded with its rulings considering the decisions to impose guards on natural persons based on the provisions of Law No. 162 of 1985 regarding the state of emergency legally null and void. And that the performer of these rulings and the ensuing effect on them is to return in kind to these people all that was subject to the measures of false custody of money and property, and in this way, some rulings were issued by the ordinary judiciary, which necessitated expediting legislative intervention to resolve the disputes that existed and to avoid provoking new disputes

and confronting The serious effects of recovering some of these funds and properties in kind from the holders may affect some social, economic and political conditions. Therefore, the President of the Republic, if he issued the decree A decision by the law of the contested in those circumstances does not exceed the limits of his discretion under Article 147 of the Constitution, and the obituary of that decision by law to violate this article on an unfounded basis worthy of attention (Yassin, 1964).

However, in its opinion, the Constitutional Court also took into account the objective criterion in its oversight of regulations. In its judgment in Case No. (14) of the Supreme Judicial Year 4, issued on April 3, 1976, which stated in its merits (... that the court's judgment was based on Its oversight extends over all legislations of all kinds and ranks, whether they are original legislation issued by the legislative authority or subsidiary legislation issued by the executive authority, as the regulations are considered regulations in terms of subject matter, although they are not considered as such in terms of form because they are issued by the executive authority). In another ruling, I worked hard to discuss both formal and objective situations (Al-Dibs, 2010).

In our opinion, judicial oversight is actual and practical, and it is legitimate oversight that takes into account the work of the constitutional text and the extent of its application, whether in terms of the specified period, submitting it to Parliament, or assessing the state of necessity, taking into account the surrounding circumstances regarding the assessment and application of the state of necessity, and from that the Supreme Constitutional Court simplifies its control over Decisions by laws include examining the conditions mentioned in the constitutional text, including the purpose of submitting them to Parliament, and confirmed this in Judicial Resolution No. 139 of (19) on January 6, 2001, by saying (and since the aforementioned law decision was referred to the People's Assembly on the eleventh of November 1971, meaning that the date of the session is the same as the first ordinary session of the first legislative term, according to what was stated in the letter of the General Secretariat of the People's Assembly No. 344 dated 1/3/2000, so it was referred to the Economic Committee to discuss it and submit a report on it, and after it was submitted, the Council agreed to that The decision by law in its session held on 27/2/1971 without anyone objecting to it, given the foregoing, the decision of the President of the Republic in Law No. 66 of 1971 referred to, has stood together on his feet with his victory from any form of defect (El-Din, 1982).

About the oversight of the State Council, Article 190 clarified that the Council settles administrative and implementation disputes and the Supreme Administrative Court in Egypt was allowed to have its say in this matter, in its ruling issued on 4/14/1962, as it ruled (Al-Assar, 1995; El-Din, 1982). That the legislative texts were designed to govern normal conditions, so if exceptional circumstances arise and then force the administration to apply the normal texts, this will inevitably lead to unpalatable results that contradict even the intent of the authors of those normal texts, for the laws stipulate the procedures to be taken in normal conditions, and as long as it is not In it there is a stipulation of what must be done in case of urgent danger, then the administrative authority must be empowered to take urgent measures that did not work for anything but the interest and nothing else, and it is needless to explain in this field that there is a rule that regulates and supremacy all laws, the sum of which is the obligation to maintain the state. The principle of legality requires, first and foremost, work on the survival of the state, which allows the government to grant an exception and, in case of necessity, from the authorities what allows them to take the measures required by the situation, even if they violate that law in its verbal meaning (Ahmed, 2013; Toubat, Mahafzah, & Balas, 2019). Do you pursue the public interest? However, the ruler's authority in this field is undoubtedly free from all restrictions but is subject to principles and controls, so there must be a realistic or legal situation that calls for intervention, and that the government's action is necessary to confront this situation as the only way to confront the situation and to be a pioneer The government undertakes this behaviour in pursuit of public interest, and thus such behaviour is subject to judicial oversight. However, the task, in this case, is not based on verifying the legality of the decision in terms of its compliance or non-compliance with the law but rather based on the availability or non-availability of the aforementioned controls. If the government's pioneer in this behaviour is not the public good, but rather tends to achieve a private interest, for example, then the decision is void in this case.

Concerning the Iraqi judiciary's oversight of necessary legislation, it was stated in National Safety Order No. (1) of 2004 that the Prime Minister's decisions and procedures are subject to the oversight of the Court of Cassation and the Court of Cassation in the Kurdistan Region about emergency procedures within the region, and finally to the Federal Supreme Court, and to the



courts The aforementioned report rescinding those decisions and procedures and deciding their nullity, illegality or approval, taking into account the exceptional circumstances under which those decisions and procedures were issued (Morsi, 2010).

## Conclusions

1. This oversight of the work of necessity must be quick to gain the required effectiveness, and the body that undertakes the oversight must be able, in terms of its origin and the nature of its function, to examine everything that is presented to it as a result of the use of the powers of necessity, because the use of the powers of necessity is represented in its actions great political scope.
2. The body that undertakes oversight must be sufficiently aware of the political realities that push the executive authority to exercise other competencies - during the period of necessity - such as the authority of legislation.
3. The judiciary in many countries exercises effective control over the administration under exceptional circumstances, despite the latter enjoying a measure of freedom. Exceptional circumstance.
4. The judge - according to the jurisprudence of the French Council of State - has the right to monitor the element of appropriateness in the administration's behaviour, i.e. the proportionality between the measure taken by the administration in terms of severity with the exceptional circumstances facing the state. Judicial oversight also focuses on the element of purpose or goal of decisions taken under exceptional circumstances. The purpose of those decisions must always be to achieve the public interest, as achieving this interest and preserving the entity and safety of society, whatever the circumstances, is the real purpose behind the report of the theory of exceptional circumstances.
5. The subordination of the administration, in the case of its application to this theory, to the supervision of the judiciary is what distinguishes it from the theory of acts of sovereignty, as it may be obliged by the judiciary to compensate for the damages caused to individuals based on the idea of risks or bearing the liability.
6. Both the constitutional and administrative judiciary extended their oversight over the delegating regulations issued by the government, and the parliament expanded its prominent oversight role. He stressed the need not to extend the legislative mandate to basic rights and freedoms.

## Recommendations

1. Activating the legislative and oversight role of Parliament to maintain the required balance between the legislative and executive powers under the parliamentary system on which the Iraqi constitution is based, and then the principle of the rule of law and separation of powers is achieved and the rights and fundamental freedoms of individuals are guaranteed.
2. Although Iraq today needs more speed in issuing legislation, laws and executive work, resorting to the legislative mandate is fraught with risks because it may disrupt the constitutional system or stop the work of Parliament and lead to the executive authority's dominance over the work of the legislative authority. The alternative to delegation is the transformation of parliament from a body of parties competing for political interests at the expense of national interests to a parliament for the whole country that urges the government to submit bills to accomplish its tasks and expedite them.
3. In light of the concrete circumstances of Iraq and its political experience and light of the conflict of political blocs among them, we see the necessity of the absolute sovereignty of Parliament in the field of legislation, and it is not permissible to subject it to any restrictions other than the provisions of the Constitution. And then it will gradually reduce the role of the legislative authority elected by the people and will lead to the dominance of the executive authority in the legislative field.
4. We recommend that the Iraqi constitutional legislator should grant the President of the Republic the right to veto laws, as was the case in the first session that followed the entry into force of the Iraqi Constitution of 2005 (ie, the powers that the Presidency Council had).

5. We recommend the Iraqi constitutional legislator to address the constitutional deficiency in granting the President of the Republic the right to veto bills, because of its great importance in strengthening and strengthening his position in the Iraqi political system. The text of Article (138/fifth) of the Iraqi Constitution of 2005 in a way that the term (Presidency Council) is deleted and replaced by the term (President of the Republic).
6. We recommend the Iraqi constitutional legislator to amend the text of Article (138/fifth/b, c) of the Iraqi Constitution of 2005 in such a way that the President of the Republic objected only once, and that the Parliament's approval of the objected bill be by an ordinary majority, to Approval of laws that the Council considers to be of great importance and achieve the higher interests of the country away from delays and procrastination in approving the laws that the country needs at present.

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