

The Legal Framework Of The Declaration Of State Of Emergency And Martial Law In The Jordanian Constitution

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Abstract

The aim of this research is to examine and analyze the legal system for declaring the state of emergency in the Jordanian constitution of 1952 and its amendments. In this research you can find a description of what State of Emergency is, its characteristics based on the Jordanian constitution, and the laws that govern declaring the state of emergency, types of the state of emergency, ways of declaring emergency and structural flaws and loopholes in the laws that govern the state of emergency in the constitution., This research illustrates the impact of declaring the state of emergency on civilian's citizens and non-citizens. Conclusions and recommendations for modifications of the laws of the state of emergency are also included by the authors to protect the civil and political rights of citizens.

Key words: The Jordanian constitution, “ The State of emergency ”, The Defense law, Martial law, National defense.

Introduction:

The topic of human rights is one of the most important issues and that's why states and international organizations steadily work on protecting. Human rights which are attached to the existence of humans and their dignity. As these rights are inherent in all human beings irrespective of gender, religion or color .it is noteworthy that the development and evolution of a state in all respects, whether economic, political, social or cultural is closely linked to the extent in which human rights are respected and maintained.

All legislations, whether domestic state legislations or international laws and conventions, had established since the beginning of legal systems measures which aim at protecting human rights; this will result in the development of countries.

Notwithstanding that the respect and protection of human rights is linked to the development and power of the country as well as the interdependence between its entity and society; however, the laws regulating human rights cannot be applied in all times and places, since states might experience exceptional circumstances which may be beyond their control and lead to the implementation of these laws being impossible.

Some of these circumstances might be political such as wars, or security-related such as civil wars or security disturbances, others are natural such as earthquakes and volcanoes. Therefore, in such situations, the country is required to take adequate measures for the protection of its entity and people. Even though such measures might affect, violate and restrict human rights in order to protect the country and its people, but this shall result in the interest of the state and its people.

It is noteworthy that the Jordanian Constitution of 1952 and its amendments (**hereinafter “the Constitution”**) established some provisions which allow the person meant by the law to take exceptional measures that might detriment human rights in order to prevent the exceptional event encountered by the country, which is referred to as “the state of emergency”. This shall be to the extent proportional to the exceptional circumstance and pursuant to several conditions and requirements as will be explained later.

Problem Statement:

The problem of this research originates in the nature of the legal system which regulates the declaration of state of emergency whether stipulated by the Constitution or by related laws. As there are no clear standards to disrupt legislations regulating human rights and freedoms in a manner consistent with the seriousness of the state of emergency.

Research Importance:

The importance of this study is based on considering the disruption caused to some human rights due to the declaration of state of emergency. This has led us as researchers to assess

the legal system which regulates the declaration of state of emergency in the Hashemite Kingdom of Jordan ("**Jordan**").

Research Questions:

The research addresses the following questions:

- 1) What is meant by "the state of emergency"?
- 2) What are the instances that permit the executive authority to declare "the state of emergency"?
- 3) What are the types of "the state of emergency" in the Jordanian Constitution?
- 4) Are the types of emergency states established by the Constitution sufficient to regulate and protect the country during exceptional circumstances?
- 5) Is the competent authority to declare the state of emergency permitted to abuse its right when declaring the state of emergency according to the provisions of the constitution?

1. The concept of the "the state of emergency"

Countries may be subject to situations which are beyond their control, Neither constitutional provisions nor normal legislations can prevent such situations. Even though the norm is peace and stability, sometimes exceptional events might occur such as the case of international or civil wars, internal disturbance, or environmental disasters like earthquakes and volcanoes, or epidemics. Therefore, it becomes necessary to face these events striking the country by exceptional rules and procedures which will protect the country, its components, and its people. These exceptional circumstances are called (The State of Emergency). It is to be noted in this regard that even though the provisions of the constitution established the principle of legality which may not be derogated from, however, deviating from this principle during emergency declaration does not mean breaching constitutional legality which regulates rights and freedoms of individuals to the extent that the objective of declaration of state of emergency is to avoid serious risks; thereby protecting the country's unity, its institutions, and its residents whether citizens or foreigners. (Al- Adayleh, 2012).

Accordingly, the researchers find that constitutional legality during normal circumstances will turn into exceptional constitutional legality. Thus, the declaration of "the state of

emergency” stems from constitution and is marked as legitimate whenever declared in consistent with the provisions of the consistance and in a manner which protects the state and its components including people, territory and political authority.

It is to be noted that the Constitution regulates the declaration of the state of emergency in several articles, and establishes legal norms which will be discussed in this study, it will also address it self to indicate the types and characteristics of the state of emergency.

1.1 The definition of “The State of Emergency”

In fact, the Constitution does not define the state of emergency as an exceptional issue [and well done] but rather states the circumstances and regulates it through the provisions of Articles 94, 124 and 125 as an exceptional event which permits exceptional procedures to be taken to address such circumstances. Therefore, the researchers find that the Constitution adopted a commendable path, in order to limit the legal concept of the state of emergency.

There are several scholarly definitions concerning the state of emergency, as some of them defined it as “a set of exceptional measures which aim at preserving the safety of the country of the potential of an armed attack or a risk of internal disturbances or revolutions, through the establishment of an administrative system applied in the country which is particularly based on the concentration on authorities to achieve stability and security by the most powerful means.” While other scholars consider it as “a situation of danger which is difficult to regulate by normal measures, this shall contend authorities which are competent with exceptional circumstances to resort to emergency legal means in order to respond to dangers and face difficulties”.(Salman, 2015, p.17).

However, it is found that the most comprehensive definition according to the constitutional provisions which regulate emergency declaration and according to the legislations related to emergency declaration is, “unordinary circumstances experienced by the state, whether economic, political, national, or security related, requiring measures and actions to be taken in order to prevent such circumstances. This includes the disruption of some or all effective laws, issuing exceptional laws or provisions according to the

seriousness of the circumstances and in cases specified by the Constitution and the legislation issued in accordance to it”.

1.2 Legislations related to declaring a state of emergency and its judicial and constitutional guarantees.

If something that calls for the defense of the homeland takes place, the pre-prepared Defense Law will be announced, as it will be activated by announcing its work in order to protect the state. The first defense law was issued in 1935 and it was implemented until 1992 when the defense law No. 13 of 1992 was issued. The law of defense shall be announced based on a high royal will preceded by a decision issued by the Council of Ministers.

The Defense Law is implemented by the Prime Minister, as it works to take all necessary measures to ensure the defense of the state and the safety of its citizens. The Prime Minister can delegate his powers to whoever he deems appropriate to carry out this task.

Under Article 4 of the law, the Prime Minister has been given several powers to exercise it as needed and will be addressed in this research.

Anyone who violates defense orders shall be punished with the prescribed penalties, and the punishment may not exceed imprisonment for more than three years or a fine of three thousand dinars. However, if the defense orders do not indicate the penalty for the act, the offender shall be punished by detention for a period not exceeding one year months or by a fine not exceeding five hundred dinars.

The court of first instance shall be deemed to have jurisdiction to hear crimes committed in violation of the provisions of this law.

In order to preserve the rights and interests of individuals, this law is permitted in Article 8 for any person who is arrested or seized of his property to appeal this decision to the administrative court, and the court must decide on the decision quickly.

This law also gave the right for everyone whose funds or sources were destroyed to claim compensation, and the Prime Minister determines the amount of compensation within a period not exceeding sixty days from the date of submitting the compensation application. If the party is not satisfied with the

amount of compensation, he has the right to file a lawsuit with the competent court to demand fair compensation.

Based on the foregoing, the researchers believe that the judiciary will continue in its work in the event of a declaration of the defense law, where the courts practice their business as usual and the courts consider the place for individuals affected by the defense law. Where the judiciary contributes in these circumstances to protecting the rights and property of individuals.

In line with the constitutional principles that protect human rights and freedom, researchers find that the text of Article 8 / B of the Jordanian Defense Law affirmed the right to litigate in the event of declaring a state of emergency, which makes the government deliberate in making decisions, so that the restrictions imposed by the government are only to the extent necessary To achieve the common good

We must also not forget the role of the Constitutional Court in preserving the rights of individuals, as the Jordanian constitution promulgated in 1952 and its amendments, as well as the Constitutional Court Law of 2012 stipulated the oversight of this court over laws and regulations, and therefore the appeal of the unconstitutionality of the Defense Law.

All of this means that the rights and freedoms of individuals are guaranteed in accordance with the provisions of the constitution, and it is not permissible to violate them in the event of an emergency in accordance with the text of Article 128/1 of the Jordanian constitution, which shows that the laws that are issued may not affect the rights and freedoms.

2. Types of the state of emergency and its impact on the country and citizens

In order to demonstrate the types of the state of emergency states which are set in the Constitution and the impact of it on the country and its individuals; the types of emergency state are set out in section one while the second part discusses the impact of it on the country and its citizens.

2.1 Types of “The State of Emergency”

The state of emergency is declared in accordance with the situations which necessitated it, as it might be due to political, security or natural circumstances(Jamal Al-Deen, 2003),

accordingly the researches explored these types through the provisions of the Constitution as follows.

2.1.1 The state of emergency due to political circumstances.

It is an event which is associated with an imminent danger that threatens the security and safety of the Kingdom. As this case requires threats affecting the country's political unity which may result from the threat of war. Its declaration would lead to taking actions that will overcome such risks before they materialize. However, this shall not mean disrupting the fundamental freedoms of individuals or abolishing their natural rights, but rather restricting same in order to protect public interest in a convenient way. (Dasouqi, 2006).

2.1.2 The state of emergency due to security measures.

These situations include internal and civil war which shall be equivalent to the power of a security force and have the potential to undermine the security of the country and disturb its safety and peace in a manner that cannot be managed by ordinary means. Thus, there shall be a new legal system required to restore the integrity of the country through extending the powers granted to the parties competent of preserving security and imposing restrictions over rights and freedoms. (Al-Ekily, 2015).

2.1.3 The State of Emergency due to natural circumstances.

This type in its nature requires that the issue should be beyond the control of the country or any of its components on grounds that are beyond humans' ability such as, environmental and natural disasters, proliferation of diseases and epidemics. It is also necessary that this event shall be of a close risk of happening due to serious indicators and of a severe level that makes the implementation of legal provisions harmful and puts individuals' safety at risk, resulting in the disruption of some laws and human rights, such as right of movement and others. (Al-Dabbas, 2018).

2.2 The impact of the State of Emergency on the Country and its Citizens

The declaration of "the emergency state" may lead to changing the legal system governing legal rights in the country; whereby the powers of the three authorities might merge, creating certain circumstances which grants governments

exceptional powers to take unordinary and broad measures in order to maintain internal and national security. Some of these measures might affect the system of human rights and freedoms protected by the constitution during normal circumstances.(Shatnawi, Jordanian constitutional system, 2013),This section will discuss the impact of “ the state of emergency” on the country and its citizens.

2.2.1 The impact of emergency declaration on the country

There is no doubt that the declaration of “The State of Emergency” in a certain country shall result in several impacts, whether political, economic or security; especially changing political and economic composition of the country. As during the declaration of emergency state the power of the country’s authorities might integrate together and the scales of the legal and constitutional competencies might be turned from one side to another.(Al-Hameed, 2013).

In light of the Constitution, it is found that the emergency state has various aspects, some of which are linked to the absence of the legislative authority and the presence of an emergency situation due to an imminent event. While others are linked to maintaining the defense system where defense laws are implemented and martial law are declared. In all cases, the Constitution grants the executive authority, as a result of emergency declaration, an exceptional power in order to prevent the risks which threaten the country.

Before discussing the impact of emergency declaration on the country, it is important to note that the Jordanian legislator conferred the executive authority the right to declare the emergency state by Royal Decree issued pursuant to a resolution by the Council of Ministers, as the executive authority is competent with the implementation of legislations and the mechanisms of its implementation as well as addressing the imminent events facing the country, because the executive authority is the closest to individuals’ needs. In addition, emergency circumstances might require exceptional measures which might contradict with the effective legislations of the country and the method of implementing it, thus, the emergency state has an impact on the country whether in terms of altering its political system or its obligations towards the international community. It is noteworthy that the declaration of emergency state should not disrupt

constitutional provisions as long as no provision stipulates so.(Al-Hanaineh, 2010).

During the declaration of the emergency state institutions aim at restoring balance of the country's' components and preventing risks on the grounds of urgency, this might lead the executive authority to disrupt some laws in order to merge the functions of the three authorities or diminish the power of one of them.

The state of emergency might result in a temporary disruption of the country's obligations towards the international community, as it might lead to disrupting the provisions of international conventions and treaties in line with the necessity of urgent event. Consequently, the country becomes the focus of attention from the international community, just as the country is responsible to protect its individuals' rights; it is also a member of the international community. Therefore, the state of emergency is considered a sensitive matter for the country and the whole international community and constitutes a burden on the entire authorities of the country in a manner making its declaration a hard issue requiring the executive authority precise studies.(Al-Dabbas, 2018).

In this regard, Article 4 of the International Covenant on Civil and Political Rights issued in 1966, which began its application in 1976, stipulates that the states parties to this Covenant have the right to take the minimal measures required by the situation, provided that these measures do not conflict with other obligations resulting from Public international law. This covenant also requires member states to inform other countries that they have declared a state of emergency, and the reasons that prompted them to do so, and that the countries are notified through the Secretary-General of the United Nations. Also, the state must inform other countries when the state of emergency ends, through the Secretary-General of the United Nations as well.

Based on the foregoing, the researchers find that international human rights standards have given states the right to confront the dangers they face, by not adhering to international obligations, provided that failure to adhere to the provisions of the Covenant is exceptional and for a temporary period.

Accordingly, the norm of the declaration of state of emergency is that it is serious and temporary, terminates with the cease of

the circumstances which led to it, as well as, that it is impossible to face such circumstances without the declaration of it. It is also recommended that it should be proportional with the imminent danger in a way that the executive authority does not abuse its power unless to the extent those competences were legislated for. (Al-Lamsawi, 2007).

2.2.2 The impact of emergency declaration on individuals' rights

The declaration of the state of emergency has an impact on individuals' rights; these rights are protected during normal circumstances pursuant to national legislations and international covenants and conventions. Those impacts occur absence of effective laws. Also, by the enactment of exceptional legislations which shall impose restrictions on individuals' rights and freedoms which are usually protected during normal circumstances (Suwailem, 2013), an important example of this is the powers conferred upon the prime minister pursuant to the Jordanian Law of Defense which shall become effective in the event where emergency state is declared to defend the country, by analysis of Article 4 of the Defense Law, it is shown that the most important limits which the executive authority imposes over human rights and freedoms are the limitations on the right of movement, property, expression, employment, as well as personal rights. With regard to the right of movement during the declaration of defense law, the executive authority deprives individuals from this right and restricts them from going to certain areas. It also imposes curfews and closes certain places and prevents its access.

As for intellectual freedoms, the executive authority may impose several restrictions over the rights related to opinion and expression. In addition, the executive authority performs strict control over all intellectual activities, especially journals, magazines and publication houses, as these restrictions might go as far as the closure of publication houses. The executive authority may also close newspapers and magazines publication places as well as confiscate printed material and even prevent it from being published if it contains rumors or incite acts of violence and induce the people against the government. Supervision over press and media may be partial and specific pursuant to Article (15/5) of the Constitution, which stipulates "In the event of the declaration of martial law or an emergency state, the law may impose a limited

censorship on newspapers, publications, books and information and communication media in matters related to public safety and national defense purposes.”

Moreover, regarding the right of individuals to work and perform their jobs and businesses, the executive authority has the right to preclude individuals from import and export and transportation of goods, it might even prevent them from practicing a certain craft or from importing and exporting a certain product. The executive authority may as well close shops and prevent working in them. It also can restrict individuals’ freedoms which are related to property through seizure of movable and immovable property and confiscate it.

The state of emergency might also affect individuals’ personal rights through demanding individuals to perform a specific activity which serves public interest. Furthermore, the declaration of state of emergency also has an impact on the judiciary as it affects the principle of judiciary independence and the principle of separation of powers. As during the declaration of state of emergency some of the judiciary powers are granted to the executive authority, for example, during state of emergency a police chief may have the power of an investigating judge such as arresting suspects and referring them to exceptional and military courts. Not to mention the other restrictions which are to be discussed through examination of human rights guarantees under the declaration of emergency state.(Fahmi, 1980).

The declaration of emergency state has various impacts on individuals’ rights reflected as a result of altering the legal system in the country through granting the Executive authority broad powers that may amount in granting same ultimate and non-specific competence, as stipulated in the Constitution.

3. Forms of the State of Emergency in the Constitution

The state of emergency has a strong impact on individuals’ rights as its provisions grants the executive authority the power to impose restrictions on the constitutional rights of individuals as necessary according to threats. The Constitution addressed the state of emergency in three situations. Issuance of temporary laws, declaration of defense law, and declaration of martial law.(Al-Halalat ,2016) In each of these situations, it is found that the Jordanian legislator granted the executive authority broad powers to restrict individual rights during the

state of emergency state, according to constitutional provisions which granted such powers broadly without limiting the competency of the legislative authority.

However, the Jordanian legislation established several guarantees which shall control the actions of the executive authority and the accountability of it due to the abuse of its power during emergency state. It also granted injured individuals the right in obtaining proper compensation on the basis of the procedures conducted against them in light of emergency declaration. In this chapter, the researchers will demonstrate the types of emergency states and the judicial and legislative guarantees which protect human rights under the Constitution and the laws issued by virtue of it. (Al-Dabbas, 2018).

3.1 The State of Emergency which requires issuing provisional laws

The state of emergency is one of the events which allow the executive authority to issue laws in the absence of the legislative authority on a temporary basis, until introduced to the legislative authority in its first meeting. Thus, this is considered a departure from the principle of separation of powers in certain circumstances specified by the Constitution by virtue of Article (94) which states:

“1- When the House of Representatives is dissolved, the Council of Ministers – with the approval of the King - shall have the right to issue provisional laws to cover the following matters:

- a. General disasters.
- b. The state of war and emergencies.
- c. The need for necessary and urgent expenditures which cannot be postponed. The provisional laws - which should not violate the provisions of the Constitution - shall have the force of law, provided they are placed before the Parliament in the first sitting it holds. The Parliament shall take decisions in their regards during two consecutive ordinary sessions from the date of their referral. It may approve, amend or reject such laws. If it rejects them or the period provided for in this Paragraph elapses without decisions, the Council of Ministers should - with the approval of the King - declare their nullity immediately; and from the date of such declaration the force of law they had shall cease provided that this shall not affect contracts or acquired rights.

2- Provisional laws shall come into effect in the manner laws come into effect by virtue of the provision of Article (93) of this Constitution.”

By analysis of the previous provision, it is found that the executive authority may issue and implement temporary laws in cases where the national assembly is dissolved and under specific requirements as follows:

- 1) **Dissolution of the national assembly.**
- 2) **The availability of certain conditions specified by the law.**
- 3) **To issue such laws on a temporary basis.**
- 4) **Provisional laws should not violate the provisions of the Constitution.**

3.2 The State of Emergency which requires the issuance and implementation of the Defense Law

Article 124 of the Constitution states the following, “In the case of an emergency necessitating the resort to the defence of the Kingdom, a law, which shall be known as the Defence Law, shall be enacted giving power to the person specified therein to take such actions and measures as it may be necessary, including the suspension of the operation of the ordinary laws of the State, with a view to ensuring the defence of the Kingdom. The Defence Law shall come into force upon its proclamation by a Royal Decree to be issued on the basis of a decision of the Council of Ministers.”

By analysis of the previous Article, the researchers found that the Jordanian legislator established a special case of emergency concerning the resort to defense of the country, whereby it requires the implementation of a special law, known as “The Defense Law” to address the circumstances affecting the country, and it thus grants a person specified by the law to take procedures and measures capable of dealing with the emergency matter; including the disruption of the laws in a manner that shall restore security and achieve defense.

And from there came the need to study the State of Emergency as an event which requires the issuance and implementation of ‘The Defense Law’, this shall be demonstrated as follows.

- 1) **The Law of Defense and the state of emergency which requires the implementation of it.**

As mentioned earlier, the law of defense is one of the ordinary laws which its enforcement is related to requirement of the necessity to defend the country, as it is a law issued by the legislative authority during its ordinary or an extraordinary session as opposed to the issuance of provisional laws.

With regard to the state of emergency which requires the implementation of the defense law; the Constitution only stipulated that the Defense Law shall become effective in an event which requires national defense, however, the Defense Law of 1992, which is considered the most recent defense law issued in accordance to article (124) of the Constitution exclusively stipulates the events which require the implementation of 'The Defense Law', whereby Article (2/a) of the Defense Law, which reads " Should there be a reason that requires national defense in the event of emergency which shall threaten national security or public safety throughout the Kingdom of [Jordan] or a part of it, due to war or an event which threatens war, or any disturbances, or internal armed conflicts, or natural disasters, or a disease or an epidemic. This law shall be declared effective by Royal Decree issued pursuant to a resolution issued by the Council of Ministers."

2) Declaration of the emergency state in light of the Defense Law and the requirements for issuing and declaring the defense law.

The researchers found that the provision of Article 124 of the Constitution that in order to issue the defense law the necessity of an emergency event which calls for national defense is required, without specifying its nature or the procedure for declaring the state of emergency, as mentioned earlier. Furthermore, the Constitution required that defense law shall be implemented by virtue of a Royal Decree in accordance to a resolution by the Council of Ministers.

The researchers find that article (124) of the Constitution required that in order to issue defense law there shall be an urgent situation which demand defending the country, without specifying its concept or the mean of declaring it. It also recommended that the defense law shall be issued upon a royal decree by virtue of a resolution from the Council of Ministers.

It is noteworthy that the Jordanian constitutional legislator did not specify a standard to the suspension of defense law by

virtue of the substantive and formal aspects but rather left it to the discretion of the executive authority. In that, the researchers take a side against the Jordanian legislator for the violation of the principle of relativity which requires that the emergency state which demands the implementation of defense law shall fit the necessity of it. Whenever the emergency circumstance is over it is to restore the situation prior to the event which required and it and terminate the law of defense. However, by reference to the Jordanian Defense Law of 1992, the provision of Article (20) shows that the legislator addressed the formality of the issue of terminating defense law in the same manner it is implemented, and that is in order to terminate defense law, a royal decree shall be issued by virtue of a resolution of the Council of Ministers. However, the reasons and circumstances of termination were not mentioned, thus, this shall leave the executive authority invoking the defense law without a real cause of implementing it.

When referring to the practical reality of declaring a state of emergency and activating the defense law, we find that they were recently announced on March 17, 2020 in order to limit the spread of Corona Virus, where His Majesty issued a royal will, at the request of the Council of Ministers announcing the implementation of Defense Law No. 13 for the year 1992, in support of the text of Article 124 of the Jordanian constitution, which gives the executive authority to apply the law in several cases, including the spread of epidemics.

In order to protect citizens and individuals residing on the territory of the state from this epidemic, the government issued several defense orders, some of which are briefly reviewed as follows:-

- 1- On March 19, 2020, the Prime Minister announced Defense Order No. 1, the most prominent of which was the suspension of some provisions of the Social Security Law in order to alleviate the consequences of this crisis on the private sector and confront economic challenges.
- 2 -Defense Order No. 2 was announced on March 20, 2020 to prohibit the movement of people in all regions of the country, starting from seven in the morning until another notice in order to preserve the safety of citizens and prevent the spread of the epidemic.

3- On March 26, 2020 defense order No. 3 was issued, which imposes financial fines and penalties amounting to imprisonment in addition to the seizure of vehicles and the closure of commercial stores, in order to control the epidemic to prevent its spread

4- Defense order No. 6 was announced on April 8, 2020 in order to protect workers 'rights in various economic sectors in light of the trend to gradually operate some sectors and reduce economic losses resulting from the total closure of all facilities.

5- Defense Order No. 7 was issued on April 15, 2020 to organize school, university education and vocational training remotely in order to ensure the continuity of the educational process and not to be interrupted.

6- Defense Order No. 9 issued on April 16, 2020 to protect affected companies and support daily workers came as part of a series of financial measures.

By implementing the Defense Law and the orders issued according to it, the state was able to impose measures aimed mainly at protecting public health and mitigating the effects of epidemics, health and economic. The rights of workers in the public and private sectors and those with economic interests were also protected.

Based on the foregoing, the researchers believe that what the government issued of the defense orders was based on the text of Article 124 of the Constitution and the text of Defense Law No. 13 of 1992 in order to protect the state and its capabilities, as well as protect individuals and their interests. In order to ensure the implementation of the provisions of the Defense Law and its orders issued, this law stipulated in Article 6 that the Courts of First Instance should be competent to look into the crimes committed.

The researchers also believe that the government has committed to applying the defense law and the orders issued pursuant to it in the narrowest possible range and in a manner that does not affect and protect the rights of Jordanians, and in a manner that ensures respect for private property.

3.3 State of Emergency which requires the declaration of Martial Provision

To simplify the concept of martial law and its requirements, first, the definition of martial law should be demonstrated and then the formal and substantive requirements which should be available in order to declare martial law will be discussed.

3.3.1 The definition of Martial Law.

Martial law is one of the most serious measures taken by the executive authority to defend the country's security and peace, as the Jordanian legislator granted the executive authority the power to take exceptional measures and procedures during the declaration of martial law in accordance to Article (125) of the Constitution which states

“(i) In the event of an emergency of such a serious nature that action under the preceding Article of the present Constitution will be considered insufficient for the defence of the Kingdom, the King may by a Royal Decree, based on a decision of the Council of Ministers, declare martial law in the whole or any part of the Kingdom.

(ii) When martial law is declared, the King may by a decree issue such orders as may be necessary for the defence of the Kingdom, notwithstanding the provisions of any law in force. Persons charged with the implementation of such orders shall continue to be subject to legal liability for all acts committed by them under the provisions of any such laws until they are exempted of such responsibility by a special law enacted for the purpose.”

By analysis of the aforementioned provision, it is found that the Jordanian legislator had indicated the seriousness and danger of the state of emergency that requires the declaration of martial law. Whereas, the procedures and measures stipulated in Article (124) of the Constitution should be considered inadequate to defend the country. Accordingly, the emergency event which requires the declaration of martial law should be of a serious and dangerous nature that threatens national security and peace, and that the implementation of defense law will fail to protect the country.

Based on the aforementioned, it is found that for the legality of the declaration of martial law, it is necessary that the procedures and measures established in the defense law were incapable to address the urgent and serious circumstances. Furthermore, it is unconstitutional to declare martial law without confirming that the procedures and measures stipulated in the defense law could not protect national security.(Shatnawwi, 2013).

The researchers also found that the Constitution granted the Executive authority broad discretionary power to assess the seriousness of the emergency state facing the country, and whether it requires the implementation of martial law or not, however, the legislative authority shall not have any role regarding this matter, as the Constitution does not grant the Parliament any power in the events of declaration, extension and termination of martial law, this will result in breaching human rights by the executive authority.(Al-Hayary, 1972).

Martial law were declared twice in Jordan during the current constitution. Where it was declared for the first time in 1957 by virtue of a Royal Decree with the approval on the Council of Minister's resolution No. 1 dated 25th of April, 1957, and it was terminated by virtue of a Royal Decree with the approval on the Council of Minister's resolution No. 640 dated 29th of November, 1958 after lasting for a year from its issuance date. As a result of the termination of martial law, a declaration dated 29th of November, 1958 was passed by the Council of Ministers to end all the issued customary instructions in accordance to Article (125) of the Constitution.

The declaration states, "All customary instructions issued by the Government and any of its amendments are automatically abolished, on the grounds that such instructions were issued to regulate the situation requiring their issuance. Another time martial law were declared was by virtue of a Royal Decree granting the approval on the Council of Minister's resolution no. 254 dated 5th of June, 1992, which lasted for two years, as it was terminated on the basis of the approval of his Majesty, the King, on the resolution no. 970 in 1992.(Shatnawi, The principles of Jordanian administrativelaw, 1996).

3.3.2 The requirements of the declaration and termination of Martial Law.

By analysis of the provision of Article (125) of the Constitution, it is found that,

- a- The declaration of martial law shall be issued by approval of His Majesty, the king, in accordance to a resolution issued by the Council of Ministers.
- b- The state of emergency which requires the declaration of martial law shall be of a significant and serious threat of risk.
- c- The measures and procedures taken in accordance to the defense law shall not be enough to defend the country.

- d- Termination of martial law shall be by virtue of a royal decree pursuant a resolution by the Council of Ministers.

3.3.3 The impact of Martial Law on individuals.

The declaration of Martial Law has a direct impact on individuals' rights, as in the case of declaration of defense law. However, with regard to the constitutional nature of the declaration of martial law and the broad powers granted for the executive authority during the declaration of martial law and as such powers contradict with the principle of legality. Therefore, the declaration of martial law has particular effects other than those concerning the implementation of defense law, as follows.

The declaration of martial law might affect all rights and freedoms of individuals without any specific legal control as opposed to the case where defense law is implemented which stipulates the power of the executive authority in restricting specific rights and freedoms as necessary for national defense. Thus, during the declaration of martial law the executive authority is permitted to take any measures which shall defend and protect the country and its components, in this regard the competent person is granted broad discretionary powers pursuant to the instructions issued by his majesty, the King in accordance to Article (125/2) of the Constitution, which states: "(ii) When martial law is declared, the King may, by a decree, issue such orders as may be necessary for the defence of the Kingdom, notwithstanding the provisions of any law in force. Persons charged with the implementation of such orders shall continue to be subject to legal liability for all acts committed by them under the provisions of any such laws until they are exempted of such responsibility by a special law to be enacted for the purpose.

In the text of Article 3 of the Defense Law, it was stated that the liability should be lifted as a result of the end of martial law of 1958 and 1992, that all civil and military employees, as well as all other persons who took over the administration of martial law's instructions, be exempted from any legal liability arising from their actions in accordance with the provisions of the applicable laws and regulations.

The declaration of martial law aims to create a situation of authoritarianism and full social control through the strict actions taken by the executive authority against individuals whereby it controls economic, social and political life of citizens reaching a state which makes the country of a police nature,

especially that the declaration of emergency state is not restrained to a certain place or time.

The declaration of martial law without any supervision, may lead to the breach of the most significant human rights and freedoms. As it grants the executive authority the right to violate all effective laws and regulations; including the ones protecting individuals' rights. Furthermore, the provision of Article (125/5) of the Constitution expressly provided that the instructions issued during the declaration of martial law may contravene with the effective laws and regulations.

It has been stated in the customary administration instructions for the year 1957 that, despite what was stated in any law or other system, the Council of Ministers has the right to dispense with the services of any employee if the employee has that party activity or affiliation with any of the unlicensed political parties, provided that it is combined with The decision of the Council of Ministers regarding higher-level employees to ratify His Majesty the King, and the decision issued is not subject to appeal.

Therefore, we can say that these instructions deprived state employees of the right to participate in the political process, by denying them to join the parties.

These instructions clarified how to deal with the judicial side by stipulating the formation of a special military martial court, consisting of a president and two members of the Jordanian army officers. These instructions indicated that this court has the authority to try all the people who participated in the attempt to attack the life of King Hussein bin Talal, as well as in the attempted coup against the regime, and according to the instructions, the accused may appoint a lawyer to defend him. Court decisions are issued unanimously or by majority, and its decision is not subject to appeal before any party.

As stated in Article 20 of the martial law instructions of 1967 to stop the implementation of laws that conflict with these instructions in order to maintain security and public order.

Conclusion:

The state of emergency is an exceptional event encountered by the country which shall disrupt some laws and facilities of the country, whereby the powers granted to the three authorities might intermingle. Thus, the executive authority is

obliged to declare the state of emergency in order to protect the country's entity and individuals whenever it is impossible to protect the country against dangers by ordinary laws. From this point, the researchers have focused in this study on highlighting the legal framework concerning the declaration of state of emergency for the importance of it as it concerns human rights and the protection of the country's entity against the extraordinary circumstances facing the country. At the end, the study arrived at the following results and recommendations.

Results

- 1) The state of emergency is an exceptional case which requires that some measures should be taken in consideration to maintain social, economic, and national security of the country. That is to say that 'The State of Emergency' may be required during political or certain circumstances which are considered as unusual.
- 2) According to the Constitution, the resort to the state of emergency is centred in three situations. First, the existence 'The State of Emergency' which requires enacting provisional laws. Second, where the law of defense is implemented and last, where martial law are declared.
- 3) The Law of Defense of 1992 imposes several restrictions over human rights and freedoms. Particularly the fundamental freedoms, such as freedom of speech, right of movement, right of ownership, right to work, and personal freedom. These rights are based on achieving the defense system to the extent required by emergency.
- 4) Martial law are a legal measure required in the occurrence of the events where a more serious situation other than that by which the defense law is implemented. Whereby the provisions of the defense law become inadequate to defend the country against the danger. During the declaration of martial law the executive authority is granted the power to take any decisions which it deems appropriate to defend national security, regardless of any effective laws at that time.
- 5) Despite that martial law might include provisions which do not comply with the constitution and effective legislations. The Constitution established a legal norm implying that urgent circumstances should not be an excuse for the violation of human rights and freedoms.

Recommendations

- 1) It is recommended that the constitutional legislator should establish a constitutional standard for the termination of the defense law in a manner consistent with the state of emergency. For example if the urgent event is over then defense law should be terminated.
- 2) It is recommended to set constitutional provisions which emphasize the role of the judiciary and its independence in light of emergency state, so that the functions of the civil courts are available during the declaration of martial law.
- 3) Article (124) of the Constitution should be amended in a way that the person specified by the law for taking the necessity measures to cope with the defense situation should be of a degree of responsibility, like a committee formed of the members of the three authorities.
- 4) It is necessary that section two of Article (125) of the Constitution should be amended by redrafting it in a manner that removed any vagueness and ambiguity regarding the liability of those concerned with the implementation of martial law. The legislator should specify the nature of such liability including the individuals acts which are out of the scope of martial law; especially that the disruption of laws during the declaration of martial law may result in no legal liabilities upon the violation of such.

This makes the aforementioned Articles of an ineffective impact. On the other hand, any private law which might exempt such persons from liability should also exempt the violations of the fundamental rights and freedoms.

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