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Censorship of Necessity Regulations: A Comparative Study (France, Egypt and Syria)

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ABSTRACT

The principle of separation of powers requires that legislation in principle be entrusted to the legislative authority (Parliament). However, the development of the role of the state and the complexity of its activities made the legislative authority unable to assume the power of legislation on its own, which imposed the necessity for the executive authority to share the task of legislation.

The necessity of the executive authority assuming the authority to legislate the passage of the state under exceptional circumstances was confirmed, which inevitably imposes the intervention of the executive authority in order to confront the state of necessity that would threaten the entity, independence, and safety of its people and land.

But granting the executive authority the power to legislate poses a great danger to the rights and freedoms of individuals, which requires the constitutional legislator to set limitations and restrictions on the power of the executive authority to legislate. The constitutional legislator has actually placed two types of restrictions on the executive authority in its practice of legislation. Such restrictions include objective restrictions that are mainly embodied in the availability of the state of necessity and which is the subject of all constitutional legislation in countries. Another type is formal restrictions that are the subject of disagreement among countries.

In order to ensure the adherence of the executive authority to the restrictions set by the legislator, the executive authority, in the course of its legislative regulatory activity, was subjected to censorship by both Parliament and the judiciary. The countries in question varied in adopting this censorship.

Here, it must be pointed out that Islamic jurisprudence was precedent of any man-made system in deciding the judicial censorship on the work of the administration. It also adopted in its application the best and most effective models of censorship patterns. What is meant by this is that the administrative justice system is independent of the ordinary judiciary, which is embodied in the judiciary of grievances that have been Later renamed as the

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Board of Grievances.

Keywords: *regulations, parliamentary censorship, constitutional censorship, judicial censorship, objective restrictions, formal restrictions.*

I. INTRODUCTION

Dear God, you know that I have sinned a lot, but I have never left the door of your repentance, nor once have I despaired of your forgiveness.

Modern constitutions state a large number of principles that establish the rule of law and aim to protect individuals. At the forefront of these principles, there is the principle of separation of powers, which defines for each authority the limits of its competencies. Each authority manages the censorship of other authorities to forbid it from trespassing on other authorities' specialization and to stop any form of injustice or tyranny in the application of the idea of Montesquieu which states **"power limits power"**.[3]

Based on the principle of separation of powers, the legislative power is a genuine competence of the legislative authority represented by Parliament, since it is considered a representative of the people and expressing their will. However, this does not mean at all that Parliament has the authority to legislate. For several reasons and circumstances, the executive authority is granted the power to lay abstract general laws, especially in the case of exceptional circumstances that the country is going through.

If the executive authority possesses legislation under normal circumstances, then it is a fortiori to possess legislation under exceptional circumstances, and this falls – under these circumstances - at the core of the work of the executive authority. Since It is charged, whether in normal or exceptional circumstances, with ensuring the functioning of state institutions and maintaining public order.

Legislation issued by the executive authority to deal with exceptional circumstances is called the *necessity regulations*, which are considered as law in that they contain general, abstract legal rules. However, they aim to ensure the functioning of state institutions and to preserve the entity of the state, the integrity of its lands and the safety of its people.

Therefore, the regulations of necessity are of great importance in the state, but at the same time, they possess a great degree of danger in that the executive authority can exploit this power to enact rules that affect the rights and freedoms of individuals.

[3] Sulaiman Tamawi, *General Theory of Administrative Resolutions "A Comparative Study",* Sixth Edition, Cairo, University of Ain Al-Shams, 1991, P.19

With the aim of reducing the danger of the executive authority in issuing regulations of necessity, the legislator, whether constitutional or ordinary, has deliberately placed restrictions on its competence in this area. These restrictions are divided into objective restrictions represented by the importance of having a state of necessity that is the subject of the agreement for all legislation in the comparison sample countries. Even the agreement of jurisprudence and the judiciary, and formal restrictions that differ from one country to another or maybe completely absent, as is the case in Syria.

We believe that the objective and formal limitations established by the constitution and the law are meaningless unless they devote censorship over the work of the executive authority in the course of issuing regulations in order to ensure that it does not deviate from the limits set for it and does not abuse the rights nor freedoms of individuals.

Accordingly, we find that the constitution has devoted two types of censorship over the necessity regulations, namely: *parliamentary censorship* and *judicial censorship*, which vary in intensity and strength from one constitution to another according to the circumstances and reality of each country.

(A) Research Problem:

The executive authority expands its power in case of exceptional circumstances so that it assumes, like the legislator, the authority to issue regulations that contain general, abstract legal rules that promise a force of the law and that must contribute to maintaining the entity of the state, the continuation of the work of its institutions, and the safety of the people. They are called *necessity regulations*. However, it seemed rather clear that it was not possible to launch the power of the executive authority in this regard. Since absolute authority is considered an absolute distortion, and every authority does not find limits to its powers and competencies tends to be an arbitrary and unjust authority. Therefore, it was crucial for the administrative judiciary along with the constitutional legislator to search for limitations whether objective or formal ones to restrict the dominance and power of the executive authority to issue regulations of necessity. The thought of the administrative judiciary, the founder of the theory of exceptional circumstances - which was literally adopted by the constitutional legislator - came up with the establishment of several objective and formal limitations to control the work of the executive authority during exceptional circumstances and to ensure that it is not arbitrary, especially regarding the rights and freedoms of individuals. It has also been subjected to the censorship of the parliamentary and judicial authorities. Thus, the research problem revolves around the importance of knowing the extent and size of these restrictions, and whether they

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play a fundamental role in securing protection for individuals from the expansion of the administration's powers in exceptional circumstances, the most important of which is the issuance of necessity regulations.

(B) The Importance of the Study:

The practical importance of the study stems from shedding light on the necessity regulations in the Syrian Arab Republic, Arab Republic of Egypt and The Republic of France, which are issued by the administration under exceptional circumstances, holding broad powers that are feared to be abused by it. Therefore, it is important to review the objective and formal limitations in issuing the necessity regulations.

The unique and exceptional situation that Syria is going through formed an important and basic motive. It prompted us to research this issue in order to determine the limits and restrictions of the authority to issue regulations of necessity and the importance of imposing parliamentary and judicial censorship on it compared to the Arab Republic of Egypt and the French Republic. The importance of the study also stems from the fact that we will conduct our study about Syria in comparison with Egypt and France in order to identify the shortcomings in the Syrian legislation, to benefit from the legislation of the countries under comparison and to suggest that the Syrian constitutional legislator dedicate and adopt it in order to control the work of the administration and ensure better protection for citizens.

(C) Methodology of the Study:

Regarding the research methodology, we have relied on the descriptive, analytical and comparative approach, which aims to study the phenomenon with all its characteristics and dimensions within certain limitations and frameworks. It is beneficial to follow the descriptive method in order to find out the objective as well as formal frameworks that the administration should commit to while issuing the necessity regulations and censorship. On the other hand, the analysis and comparison between several legal systems are useful in identifying the weaknesses, if any, in the Syrian legislation and benefit from the legal texts and provisions in the countries under comparison.

(D) Study Structure:

After the introductory section, this study is divided into two requirements:

Introductory section: The concept of necessity regulations.

The first requirement: are the restrictions included in the issuance of regulations of necessity.
The second requirement: is censorship of the necessity regulations.

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II. THE CONCEPT OF NECESSITY REGULATIONS

The constitutional legislator has granted the executive authority in exceptional circumstances very broad powers. The most important of which is the power to issue regulations of necessity, whereby it can establish abstract general rules that have the complete force of law. Therefore, it can amend laws and take advantage of this power to infringe on the rights and freedoms of individuals.

Given the importance and seriousness of this authority, it is crucial to address the definition of necessity regulations (**first**). Then determine their legal basis (**second**) in the countries under comparison, in order to be able to focus on the subject of our research.

(A) The Definition of Necessity Regulations.

There have been many labels given to these regulations. France called them the necessity systems. Whereas Egypt and Syria called them the necessity regulations, this difference lies in the name only asides from the meaning, as it carries the same content and meaning in all three countries.

As for the definition of the regulation itself, the legislator in the three countries took a negative stand. As we do not find a proper definition of it coming from the legislator in the three countries. This is not unusual to the legislator, as the legislator usually refrains from giving a definition of a specific legal term, preferring to leave this task to jurisprudence and the judiciary. Hence, it was important for jurisprudence to stand in the face of this matter, which stated many definitions of these regulations. A jurisprudential group defined it as: *"Those decrees or regulations issued to meet the exceptional circumstances that societies may be exposed to, which require rapid treatment of events in order to preserve the entity and safety of the community. The necessity regulations may be issued to face urgent matter in the absence of the parliament, and hold the same strength as the law"*[4]

Another group of jurists defined it as: *"Regulations that the executive authority creates in the absence of Parliament due to the expiration of its term, its dissolution, or while it is in the parliamentary recess. So, when an emergency matter occurs that cannot be confronted for the sake of preserving the state or one of its higher interests in order to get rid of any harm or danger that is about to occur unless by issuing it. It acquires the value and degree of law in accordance with the idea of gradual legal rules in the state"*

[4] Faher Yousef Abdullah Al-Juma'a, *Parliamentary Censorship on the Necessity Regulations*, (69) Economic and Legal research Newspaper, 2019, P.328.

Also defined as: *"Regulations issued by the executive authority in extraordinary circumstances to face internal and external risks, and may be issued in the form of decrees or decisions that possess the force of law."*[5]

By extrapolating the previous definitions, we can say that some jurists defined necessity regulations as those regulations issued by the executive authority in the absence of Parliament and under exceptional circumstances, intending to demonstrate the existence of a state of necessity represented by grave danger and the situation that threatens the entity of the state, while the definitions indicated another point, that the executive authority has the power to issue regulations of necessity during the presence of Parliament in order to confront exceptional circumstances, but also to demonstrate the existence of a state of necessity that threatens the entity of the state considering that this situation cannot be confronted by normal legitimate means, and that dealing with this situation requires great speed. In addition to the use of Ordinary means taking a great deal of time, which leads to aggravating the situation and harming public interests, the thing that is considered not at all commensurate with the interest of the state and society.[6]

(B) The Legislative Basis for the Regulations of Necessity.

As it has been indicated previously, the executive authority has the power to issue necessary regulations in order to face the serious and immediate danger that impedes state institutions from performing their tasks. Despite its importance and necessity, such authority is considered a risky power due to the dangers such regulations imply, in terms of rights and freedom of individuals in case the executive authority misuses or abuses this power.

Therefore, it was necessary for the constitutional legislator in the countries under comparison to establish a legal basis for the executive authority to rely on in issuing regulations. This basis is represented in a constitutional basis as the executive authority in the countries under comparison was granted the power to issue regulations of necessity under constitutional provisions to face exceptional conditions represented by the case of necessity.

The French Constitution issued in 1958 and its amendments, especially the 2008 amendment, stated in Article 16 that the President of the Republic has the power to issue regulations of necessity.[7]

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[5]. Muhammad Abdul Hamid Abu Zaid, *Lengthy in Administrative Law*, Arab Renaissance House, Cairo, 1996, P.276.
[6]. Muhammad Foua'ad Mehna, *Administrative Law*, Second Folder, Knowledge House, Cairo, 1967, P.1114.
[7]. Lama Al-Taher, *The Extent of Constitutionality of Emergency* Law, Law Newspaper, Faculty of Law, University of Al-Mustansariyaeh, Volume 1, Issue No.29, 2017, P.20

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The Egyptian constitutional legislator followed the same path, as it also stated granting the President of the Republic the authority to issue regulations of necessity, according to Article 156 of the current constitution in 2014, which states: *"If something happened during the session of the House of Representatives that necessitates expediting the adoption of procedures that cannot be delayed, the President of the republic calls for an emergency session to present the matter in case of the unavailability of the house of representatives, the president has the right to issue law resolutions, provided that these resolutions are put to discussion and agreed upon within Fifteen days of the convening of the new council. If these resolutions are not presented and discussed, or if they are not presented and approved by the council, it retroactively ceases to have the force of law, without the need to issue a decision to that effect, unless the council considers adopting its expiry in the previous period, or settling the consequences. It has effects."*

The Syrian constitutional legislator followed the example of the French and Egyptian constitutional legislators in granting the President of the Republic the authority to issue regulations of necessity under Article 114 of the current constitution issued in 2012, where this article stipulated: *" In case of a grave danger or situation arises that threatens national unity or the integrity and independence of the homeland, or hinders state institutions from carrying out their constitutional duties, the President of the Republic may take the quick procedures required by these circumstances to confront this danger"*

It is worth noting that the constitutional legislator in the three countries granted the executive authority, according to explicit constitutional texts represented solely by the President of the Republic, the power to issue regulations of necessity due to the great danger these regulations pose to the rights and freedoms of individuals. **In this context, the question that arises in this regard revolves around the nature of this regulation?**

To answer this, we point out that the jurists indicated that the regulation has a mixed nature. In terms of form, the regulation is of an administrative nature. Whereas in terms of content, it is considered to be of a legislative nature.[8]

For our part, we see that the necessity regulations are of a legislative nature, even if they are issued by the executive authority because they contain general legal rules that are abstract in the exact manner of the law and have the same force. In other words, they are considered legislation that has been granted the authority to issue it to the executive authority with the aim

[8]. Amr Ahmad Hasbu, *Regulations Issued under Exceptional Circumstances According to the Constitution of the United Arab of Emirates in Comparison with the Egyptian and French Law Systems,* Conditional Thinking Newspaper, Police Research Center, Sharjah Police General Command, Emirates, Volume 5, No.4, 1997, P.230

of facing a grave and immediate danger that requires speed that is not possible to delay. The thing that supports our view is that the necessity regulations are considered legislation. I.e. that they are now subject to the censorship of the constitutional judiciary, similar to the law after they were subject to the censorship of the administrative judiciary.

III. RESTRICTIONS ON THE ISSUANCE OF REGULATIONS OF NECESSITY

The executive authority has powers and privileges that assist it to perform the tasks entrusted to it under normal circumstances. A fortiori, the legislator grants it broader powers and privileges under exceptional circumstances and in cases of necessity. Accordingly, the constitutional legislator granted the executive authority the power to issue regulations of necessity in exceptional circumstances that include abstract general rules that have the full force of law. So, it can issue rules that contain restrictions that may be severe and broad concerning the freedom of individuals or that they may pose a danger to individuals, especially since they are issued under unusual circumstances. This thing may encourage them to misuse their powers and abuse them, targeting the freedoms and rights of individuals. Thus the executive authority will turn in issuing these regulations from an authority whose pursuit is to achieve a public interest to arbitrary retaliatory authority. Based on the foregoing, it has become imperative for the constitutional legislator in the three countries to place objective restrictions (Section One) and formal restrictions (Section Two) on the authority of the administration.

(A) Objective restrictions on administration authority

As indicated by their name, these regulations require that in order for the executive authority to be able to issue them, there is a state of necessity, and the availability of the latter is, in our opinion, an agreed-upon matter in jurisprudence and jurisprudence.

Proving the existence of the state of necessity is not an easy matter, as it is necessary to verify the conditions for the emergence of the state of necessity, as the administrative judiciary stipulated the existence of several conditions in order for the state of necessity to exist and to be able to judge the legitimacy of these regulations. One of the most important of these conditions is that there is a grave danger that hinders the state institutions from carrying out their tasks.[9]

It is worth mentioning that these conditions of judicial origin have been adopted by both

[9]. Taima Al-Jarf, The Principle of Legality and the Controls of Public Administration Submission to Law, 3rd Edition, Dar Al-Nahda, Cairo, 1976, p. 145. - See also, Omar Al-Borini, Views on the Supreme Court's Oversight of the Necessity for the Promulgation of Temporary Laws, Journal of Studies in Sharia and Law Sciences, Volume 32, No. 2, University of Jordan, 2005, p. 431.

constitutional and ordinary legislators. So we believe that it is necessary for us to study the conditions of necessity that are the subject of judicial agreement, jurisprudence and legislation in the comparison sample countries, namely France, Egypt and Syria.

1. The Existence of a Grave and Immediate Danger.

The state may go through circumstances and dangers during its course. However, not every danger that the state is going through constitutes a state of necessity. Therefore, the executive authority can, in this case, issue necessary regulations, as there must be several characteristics in danger so that we can consider what the state is going through as a state necessity.

These characteristics are: To be dangerous. **First** The gravity of the danger is intended to deviate from the framework of ordinary risks so that it is unfamiliar in terms of type and extent. **Secondly,** that danger should be general, and what is meant by general danger is that it affects a large group of people and not specific ones as it should. **Third** danger is immediate. By immediate danger, we mean that the danger has already occurred and has not ended yet. In addition to the existence of strong indications that it is about to occur. This danger is different from the potential danger or future danger[10]

Both the French[11] and Syrian[12] Constitution have emphasized explicitly this condition. As for the Egyptian constitutional legislator in the current constitution issued in 2012, it states in Article 156 that: *"If outside the session of the House of Representatives, something happens that necessitates expediting the adoption of procedures that cannot be delayed....."*

It did not explicitly state the condition of grave and immediate danger. Rather, it mentioned the term that necessitates expediting the taking of procedures that cannot be delayed in order to justify the executive authority's practice of the right to issue decisions that have the force of law. The jurisprudence has already pointed out that the term "necessary speed" implies the existence of grave and immediate danger.

Therefore, The necessity that necessitates expediting the taking of the necessary decisions to confront it[13]

2. Disabling Public Authorities from Carrying out their duties

The presence of a grave and immediate danger is one of the most important conditions that

[10]. Yahya El-Gamal, The Theory of Necessity in Constitutional Law, Cairo, 2002. p. 89.
[11]. Article 16 of the current French constitution promulgated in 1958 and its 2008 amendments "If the institutions of the Republic ….. are exposed to grave danger and the situation ……."
[12]. Article 114 of the current Syrian constitution issued in 2012 "If a grave danger arises and the situation ……."
[13]. Azhar Hashem Ahmad Al-Zeheiri, Censorship of the Constitutionality of Administrative Resolutions and systems in the Constitution of the Republic of Iraq 2005 "A Comparative Study", PhD Thesis, University of Baghdad, Baghdad, Iraq, 2017, P.85

contribute to the existence of a state of necessity. However, this alone is not sufficient for the availability of a state of necessity in a way that allows the executive authority to issue regulations of necessity. In fact, such danger should result in the disability in the functioning of public authorities and its inability to deal with their tasks using ordinary methods. In this case, we are faced with a state of necessity. Therefore, the power of executive authority expands towards issuing necessity regulations, so that these regulations contribute to restoring things into perspective.[14] This was confirmed by the constitutional legislator in France and Syria, as it was stated in Article 16 of the current French constitution issued in 1958 that: *"If the institutions of the Republic are under grave and immediate danger...., which has resulted in the general constitutional authorities stopping their regular work, the President of the Republic may take procedures.....",* in terms of the current Syrian constitution issued in 2012, it highlighted a text similar in content to the French text in Article 114, which states: *"If a grave danger or situation arises and threatens national unity or the integrity of the independence of the homeland, or hinders state institutions from carrying out their constitutional duties.....".*

As for the Egyptian constitutional legislation, we do not find a text that includes terms similar to the text of the French and Syrian constitutions. Rather, the text was general, as Article 156 of the current constitution issued in 2014 states: *"If outside the session of the House of Representatives, something happens that necessitates expediting the adoption of procedures that cannot be delayed ……"*

What is meant by the circumstance that necessitates expediting the taking of procedures that cannot be delayed was interpreted according to the viewpoint of a group of jurists as expressing the grave danger that hinders the state's authorities from carrying out their duties.[15]

From the foregoing, We conclude that the condition of a state of necessity is that there is a grave and immediate danger that threatens the integrity and independence of the homeland or hinders the state institutions from performing their tasks is a condition subject to the agreement of the three countries.

(B) Formal Restrictions

The availability of a state of necessity by itself is not sufficient to give the President of the Republic the authority to issue regulations of necessity. Rather, there must be formal restrictions in addition to a restriction on the availability of a state of necessity so that the

[14]. Omar Helmi, Fahmai, The legistlative Function of the Head of the State in both Presidential and Parliament Systems "A comparative Study", Cairo, 1999, P.480

[15]. Azhar Hatem Ahmad Azheiri, *Censorship of the Constitutionality of the Systems,* A Former Reference, P.85

President of the Republic can issue these regulations.

There were many formal restrictions in the countries under comparison, according to what was mentioned in the constitutional texts, and we will mention this according to the following:

1. Formal Limitations on the Authority to Issue Regulations of Necessity in France.

The French constitutional legislator has imposed formal restrictions in addition to the objective restriction that has already been talked about, in order to minimize the danger of such regulations on rights and freedoms and to prevent the administration from arbitrarily using the regulations of necessity. The formal restriction mentioned by the French constitutional legislator in accordance with Article 16 of the current constitution issued in 1958 is to consult only some political figures and the parties designated by Article 16, namely the Prime Minister, the Speaker of Parliament (the National Assembly and the Senate) and the Constitutional Council[16].

In this regard, We should note that the consultation should be formal, whether written or oral since the text does not require a specific form[17].

2. Formal Restrictions on the Authority to Issue Regulations in the Arab Republic of Egypt

The Egyptian constitutional legislator followed the same approach that the French constitutional legislator enacted in terms of placing formal restrictions on the authority of the President of the Republic to issue necessary regulations in order to minimize the danger involved in these regulations. The constitutional legislator in the Arab Republic of Egypt, in accordance with the text of Article 156 of the Constitution, stated a number of formal conditions. Article 156 stipulated that: *"If, outside the session of the House of Representatives, what necessitates expediting the adoption of procedures that cannot be delayed, the President of the Republic calls for an emergency session to present the matter to it. In case of the unavailability of the house of representatives, the president may issue law resolutions provided that these laws are discussed and agreed upon within fifteen days from the meeting of the new council....."*

We conclude from the text of this article that the Egyptian constitutional legislator has differentiated between two cases:

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[16]. Article 101 of the *Egyptian Constitution*, 2014, " the People's Assembly is responsible for the authority to legislate……."

[17]. Mahmoud Subhi Ali Al-Sayyed, *Censorship over the Constitutionality of the regulations in Compared systems*, PhD Thesis, Department of Law, University of Ain Al-Shams, 2011, P.319

The First Case: A Situation among the Sessions of People's Assembly.

In this case, the parliament is not in session, but it is present. Here, according to the text of this article, the President of the Republic does not have the authority to issue regulations of necessity. Rather he must call the Parliament for a meeting in which he can present the matter to it. Jurisprudential opinions abounded about this term, between an extension of the authority of the president or a restriction of it[18]. We support not granting the President of the Republic, in this case, the authority to issue regulations of necessity. We consider that this article, from our point of view, is clear in not allowing the President of the Republic to issue regulations of necessity in the event of something that requires speeding up in taking procedures outside the session of Parliament. Rather, the President of the Republic must call for the People's Assembly to convene and present the matter to it. Given that the People's Assembly is the holder of the general and original mandate in legislation according to the current Egyptian constitution issued in 2014.

The Second Case: The Absence of the House of Representatives.

In this case, the Assembly is not present either because it is dissolved or if the term of the Assembly expires. In this case, the President of the Republic can issue regulations that have the force of law[19]. However, in this case, the constitutional legislator stipulated, according to Article 156, an essential condition that these regulations must be presented to the Council within a period specified by the Constitution of fifteen days from the date of the new Council meeting.

3. The Absence of Formal Restrictions on the Authority of the President of the Republic to Issue Regulations of Necessity in Syria.

The French and Egyptian legislators imposed formal restrictions on the authority of the President of the Republic before taking the regulatory procedures to handle the case of necessity. However, the Syrian legislator did not mention any formal restrictions on the authority of the President of the Republic.

In this regard, we can say that the President of the Republic, according to our current constitution, is not obligated to consult the People's Assembly or the Supreme Constitutional Court, nor even the Council of Ministers or the Prime Minister. He is also not obligated to deliver any speech before Parliament. We believe that the Syrian constitution was not

[18]. Fahed Al-Yousef, Abdullah Al-Juma'a, Parliamentary Censorship on Decrees of Necessity, Economic and Legal Research Newspaper, University of AL-Mansoura, Faculty of Law, 2019, P.347

[19]. Fahed Al-Yousef, Abdullah Al-Juma'a, *Parliamentary Censorship on Decrees of Necessity*,Former Reference, P.348

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successful in terms of not requiring any formal restrictions on the authority of the President of the Republic in case of necessity, due to the seriousness of the situation in which he is acting accordingly. As it was necessary, according to our estimation, to put formal restrictions following the footsteps of the Egyptian and French legislators. We suggest that the Syrian constitutional legislator limit the authority of the President of the Republic by consulting the Supreme Constitutional Court and requesting the approval of the People's Assembly. Taking into consideration the interest of the President of the Republic and that of the citizens at the same time.

Based on the foregoing, we believe that the authority of the President of the Republic is restricted in the three constitutions with an objective condition that is embodied in the realization of the state of necessity that allows the President of the Republic to enjoy exceptional powers to face exceptional circumstances. In other words, the constitutional legislator estimates that such exceptional conditions should be handled with the exceptional power of the executive authority represented by the president of the republic.

Since there is a similarity in the positions of the three countries in terms of the substantive restriction. However, they differ in the formal restrictions, as we found that the Egyptian and French legislators require formal restrictions, whereas the Syrian legislator did not require the availability of any condition or formal restriction.

IV. TYPES OF CENSORSHIP THE NECESSITY REGULATIONS ARE SUBJECT TO

The legislator has imposed objective and formal conditions on the authority of the President of the Republic in order to be able to issue the necessity regulations in the manner shown above. However, these conditions are considered useless theoretical conditions and the commitment of the public administration to them remains meaningless unless there is a supervisory body that guarantees verification of the availability of these conditions and restrictions and to lets The administration be aware of it. Thus the administration's adherence to the conditions means that the decisions and procedures taken by the President of the Republic in exceptional circumstances are legitimate procedures because what the President of the Republic takes under these circumstances must be subject to censorship to prevent abuse and infringement. The issuance of necessity regulations by the President of the Republic in exceptional circumstances is one of the most dangerous and most important powers that he possesses, and for this reason, it was crucial to impose effective censorship on it.

As a matter of fact, constitutions have practically and effectively subjected the President of the Republic, as he performs his duties under exceptional circumstances, to double censorship,

different in nature and extent. Therefore, he is under parliamentary censorship (first branch) as well as administrative judiciary censorship (second branch)

(A) Parliamentary Censorship

Parliamentary censorship is one of the censorship forms that Parliament exerts over the executive authority (the President of the Republic) since executive authority is issuing necessary regulations. The extent of this censorship varies in countries under comparison according to the form of the prevailing political system and the constitutional organization of these powers. Accordingly, we will talk about the concept of parliamentary censorship (**First**) We review the powers of Parliament when presenting the regulations issued by the President of the Republic in the three countries under comparison (**Secondly**).

1. The Concept of Parliamentary Censorship on the Regulations of Necessity.

Parliamentary censorship means the censorship exercised by parliaments in the course of carrying out their tasks. The extent of parliamentary censorship over the executive authority varies according to the prevailing political system in the country. Parliamentary censorship is stronger and more severe in the parliamentary system than in the presidential system.[20] One of the requirements of the parliamentary system is to grant Parliament broad censorship powers over the work of the executive authority. These powers are exercised by Parliament under normal circumstances, and it is a fortiori to exercise them more severely and extensively under exceptional circumstances to curb the executive authority's infringement on the rights and freedoms of individuals in these circumstances. Its arbitrariness and tyranny are considered broader in exceptional circumstances than in normal circumstances via the administration's exploitation of such circumstances[21]. As for the presidential system, according to this system, the powers of Parliament are not so broad, given that it is based on the separation of powers. Therefore, Parliament's censorship is weak and ineffective unless the constitution grants special powers to Parliament to monitor the executive authority.

Based on the foregoing, we can make our own arguments and give a definition of parliamentary censorship on the regulations of necessity as: ***"The censorship carried out by the legislature to ascertain the extent to which the necessity regulations are compatible with the restrictions set by the constitution once they are issued. Parliament has the power to approve, amend or repeal them".***

[20]. Mahmoud Atif Al-Banna, *Judicial Censorship on the Public Administration*, a publish research in Administrative Sciences of Arab Organization Magazine, issued by the Arab Organization of Administrative Sciences, Cairo, 1974, P.8

[21]. Abdullah Talbeh, *Judicial Censorship, University of Aleppo Publishing*, Aleppo, 2009, P.43

2. Parliament's Powers towards the Executive Authority.

The constitution in Egypt and France has placed a formal restriction on the executive authority's exercise of its power by issuing necessity regulations. This restriction is represented in the necessity of submitting them to the Parliament, as it has the original competence in legislation so that it can either accept, amend or cancel them. This offer is not a show, as the constitutional legislator arranged that the necessity regulations should not be presented to the Council as a strong penalty, represented in the retroactive demise of what they had in terms of the force of law[22]. A difference has been witnessed among the countries under comparison which will be clarified as the following:

(a) The Authority of the French Parliament towards the Regulations of Necessity.

In Article 16 of the current constitution issued in 1958, the French constitutional legislator required the parliament to meet in its two chambers by the force of law as soon as the President of the Republic declares resorting to Article 16, that is, without the need to convene it by the President of the Republic, and Parliament remains in session throughout the period of work of this Article, and the President cannot end its session. The purpose is to ensure the continuity of Parliament's censorship over the President of the Republic[23].

In this regard, we note that the jurisprudential opinions regarding the powers of the Parliament convened during the application of Article 16 have differed. **Does he exercise his full powers as if it were in its regular session, or is its power limited to monitoring the application of Article 16 of the Constitution?**. Jurisprudence was divided into two groups: the first group believed that Parliament could not exercise its ordinary powers, while, on the contrary, the other group saw that Parliament carries out its normal activity as if it were in an ordinary session [24].

(b) The Authority of the Egyptian Parliament towards the Regulations of Necessity.

Article 156 of the current constitution issued in 2014 states that in case there is a need to expedite the adoption of procedures that cannot be delayed, the President of the Republic must call Parliament to convene in case the Council is in place as it has the original competence in legislation. Whereas, in cases where Parliament is not in place That is, it is dissolved or during

[22]. Mahmoud Subhi Ali Al-Sayyed, *Censorship on the Constitutionality of Regulations in Compared Systems*, a Former Reference, P.293

[23] Mahmoud Sobhi Ali Al-Sayed, ibid., p. 329

[24]. Lamarque (J). La théorie de la nécessité et l'article 16de la constitution de 1958. **Mia/juin.***R.D.P.* 1961.p622.

the end of the council's term and the beginning of the term of a new council. In that case, the president of the republic can issue resolutions that have the force of law, provided that they are presented to the council within fifteen days from the date of the new council's convening so that it can monitor and approve, reject or cancel these resolutions[25].

It should be noted that the Council has the power to approve these regulations, which is comprehended as a violation of Article 156 of the Constitution, which did not refer to the approval explicitly, as it stated: *"...If it is not presented and discussed, or if it is presented and not approved by the Council, it retroactively ceases to have the force of law…."*. We conclude from the text of the article with the concept of violation that if presented and approved by Parliament, the regulations still have the force of law because they become law in the technical sense and can be challenged before the Supreme Constitutional Court. It is worth mentioning that Parliament's approval of the necessity regulations takes two forms.

Either it explicitly approves them and they become law, or the parliament enacts an ordinary law that includes all the provisions included in the necessity list before it[26]. In both cases, the necessity regulations become law. On the other hand, the Council can refuse to approve these regulations if it deems that they are illegitimate, due to their issuance without being bound by the restrictions stated in the Constitution. In this case, the force of the law of these regulations ceases retroactively from the date of their issuance, and are considered as if they do not exist.

In addition, the Parliament, in case of its refusal to approve the regulations of necessity, has the power to approve the enforcement of these regulations in the period between their issuance and the date they are presented to it, or it is decided to settle the impact of them in another way according to what the Council sees fit[27]. It is worth noting that there is a big difference between approving the enforcement of the necessity regulations in the past and settling their consequences. Relying on their enforcement in the past refers to their application in the period prior to the Council's objection in full, whether for those who applied for this before the Council's decision not to be issued or after the issuance of this decision[28]. As for settling its effects in another way, it is intended to apply it, provided that the cases that have actually

[25]. Mahmoud Subhi Ali Al-Sayyed, *Censorship on the Constitutionality of Regulations in Compared Systems*, a Former Reference, P.291

[26]. Sami Gamal El-Din, Necessity Regulations and the Guarantee of Control over them, Mansha'at al-Maaref, Alexandria, 1982, p. 105.

[27]. Mahmoud Sobhi Ali Al-Sayed, Oversight of the constitutionality of regulations in comparative systems, previous reference, p. 293.

[28]. Numan Fateh Al-Dhafiri, The Legislative Competencies of the Head of State in Contemporary Political Systems with a Special Study on Kuwait, Ph.D. Thesis, Faculty of Law, Cairo University, 1997, p. 546.

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benefited from these regulations in the past are not affected[29]

(c) The Authority of the Syrian Parliament towards the Regulations of Necessity.

If both the French and Egyptian constitutional legislators have granted parliament different censorship powers between these two countries, as the parliament in Egypt has the power to amend or abolish them, and the parliament in France has this power as well. Then the Syrian constitutional legislator has not given parliament (the People's Assembly) any power or authority over regulations of necessity to distinguish them from the procedures taken by the President of the Republic under exceptional circumstances.

In addition to the foregoing, the Syrian constitution did not state the necessity of submitting these regulations to Parliament in its first session after their issuance in order for it to cancel, amend or approve them as they are in line with the laws in force.

We believe that the fact that the Syrian constitutional legislator did not provide for the necessity regulations to be presented to Parliament to take the appropriate decision regarding them is equivalent to giving the regulations more importance and division than the law because they will be applied even if they violate the law because they are considered cancelled and applicable since the date of their issuance.

We support what has been established by jurisprudence in that they give the necessary regulations the force of law. Therefore, they are applied even if they are in violation of the law. Whereas the application of the violating law is neglected because the subsequent legal text cancels the previous legal text if they are of equal legal force.

We believe that stripping Parliament in Syria of any authority or power in terms of the executive authority in exceptional circumstances strengthens the latter's tendency to tyranny and arbitrariness, as it realizes in advance that its decisions will be considered effective even if it violates the law because its work will be considered null or amending the law. This is what leads us to request the Syrian constitutional legislator to intervene quickly in order to amend this constitutional text by adding a paragraph requiring that these regulations be presented to Parliament in its first session after their issuance, in order to take the appropriate action regarding them. Despite the foregoing, we believe that Parliament's censorship of these regulations is not sufficient on its own and is often ineffective, given that it is subject to political considerations and circumstances.

[29]. Othman Abdel-Malik Al-Saleh, The Constitutional System and the Political Institution, without a publishing house, Cairo. 1998, p. 199

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(B) Judicial Censorship of Necessity Regulations

political considerations and atmosphere play a major role in parliamentary censorship, which may make it void of its content. Therefore, it was necessary to have judicial censorship on the regulations of necessity in addition to parliamentary censorship, as this censorship remains the actual and real guarantee to protect the principle of legality, including the constitution and to secure protection, rights and freedoms of individuals.

It is necessary to point out that the judicial censorship of necessity regulations is not limited to the regulations themselves, but extends to include the censorship of resolutions and procedures taken based on these regulations. But we will only study the constitutional judiciary's censorship of these regulations in the countries in question.

1. Censorship of the French Constitutional Council on Regulations of Necessity.[30]

The French Constitutional Council, in accordance with the provisions and laws of the Constitution, exercises censorship that is divided into preventive, immediate and curative censorship, according to the following:

(a) Preventive Censorship

The constitutional legislator has obligated the President of the Republic to consult the Constitutional Council before issuing a resolution of declaring a state of necessity and resorting to the application of Article 16 of the Constitution. It was also obligated to consult the constitutional Council in every procedure taken concerning the application of article 16. When referring the request to it, the Constitutional Council must verify the fulfilment of the conditions for implementing Article 16, and ensure that resorting to it has been made with the aim of enabling the constitutional public authorities to carry out their duties and functions.

In application of the foregoing, the Constitutional Council expressed its opinion based on the consultation of the President of the Republic regarding the application of Article 16 in 1961, where the Council announced the availability of the conditions for implementing Article 16 and, consequently, the integrity and validity of the President’s decision to resort to announcing the application of this Article[31]. It is a constitutional obligation regarding him, but the president remains free to accept the content of the opinion or reject it. In other words, it is mandatory to ask for the consultation of the president of the constitutional council. Yet, it is optional to work

[30]. Mamdouh Muhammad Aref Al-Shayeb, The Constitutional Case between Political and Judicial Control, "A Comparative Study", Master's Thesis, Faculty of Law, Middle East University, Jordan, Amman, 2015, 66-84.
[31]. ARSAC(R). La fonction consultative du Conseil constitutionnel. N **86.** *R.F, D, C- N.* 2006.http://www.cairn.inf.p 783.

by this consultation[32].

(b) Immediate Censorship

In addition to preventive censorship, the French Constitutional Council exercises immediate censorship over the application of Article 16 of the Constitution. The constitutional amendment issued in 2008 gave the Constitutional Council the power of immediate censorship over regulations of necessity. The constitutional legislator allowed the President of the National Assembly, the President of the Senate, 60 deputies or senators Thirty days after the implementation of the powers mentioned in Article 16, to refer the matter to the Constitutional Council, to decide whether the conditions for implementing the Article still exist or not. The Council shall decide on that in the shortest time possible. The Council, by force of law, may look into the availability of these conditions within sixty days of working with exceptional powers, and at any time after this period[33].

Consequently, we believe that the amendment has strengthened the censorship of the Constitutional Council, so that its censorship includes the decision to declare the work by Article 16 and the procedures taken in accordance with it, as well as to ensure the extent to which the conditions of the justified state of necessity continue to be met.

(c) Subsequent Curative Censorship

Not only did The constitutional legislator grant the Constitutional Council the exercise of preventive and immediate censorship over the necessity regulations, but also, according to the constitutional amendment that took place in 2008, the exercise of remedial censorship, which is represented by the presence of subsequent censorship. Article 61/1 stated: *"If during the looking into a case before a judicial body it is proven that a legislative text violates the rights and freedoms guaranteed by the Constitution, the Constitutional Council may be notified, based on a referral from the State Council or the Court of Cassation, of this issue within a specified period of time. The Basic Law defines the conditions for applying this article."*. From the text of this article, it is noted that the possibility of sub-plea the constitutionality of regulation before the Constitutional Council in the context of the ordinary or administrative judiciary's consideration of a case brought before it. The referral is made through the Court of Cassation or the State Council, specifically if there is a legislative text that has infringed the rights and freedoms guaranteed by the Constitution.

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[32]. Mohamed Rabie Morsi, The Legislative Authority of the Head of State in Modern Systems. Ph.D. Thesis, Faculty of Law, Cairo University. Cairo, 1996. 441
And And. Rousseau(D). *Droit du contentieux constitonnel.* Paris. Montchrestien. 1995.p24

[33]. Azhar Hashem Ahmad Lazhiri, Oversight of the constitutionality of systems, previous reference, p. 56.

2. Censorship of the Supreme Constitutional Court in Egypt on Necessity Regulations

Necessity regulations are one of the most important procedures taken by the President of the Republic in confronting the case of necessity. Necessity regulations are subject to the censorship of the Supreme Constitutional Court in accordance with its general competence to monitor regulations. The Supreme Constitutional Court exercises its censorship over necessity regulations by examining the extent to which the conditions for issuing these regulations are met and how available these conditions are, in addition to The President of the Republic adhering to the restrictions included in the constitution, which were issued in accordance with the Egyptian constitution issued in 1971, based on the text of Article 74 of it and the text of Article 147 of the same constitution[34].

The current constitution has subjected the regulations of necessity to the censorship of the Supreme Constitutional Court as well, in accordance with its general competence to monitor regulations, as Article 192 of the current Egyptian constitution issued in 2014 states: *"The Supreme Constitutional Court is solely responsible for judicial censorship on the constitutionality of laws and regulations....."*.

The Supreme Constitutional Court exercises its jurisdiction in censoring the necessity regulations by examining the extent to which the conditions for issuing these regulations are fulfilled and the extent to which the President of the Republic adheres to the restrictions included in the constitution, which are contained in the text of Article 156.

The Constitutional Court exercises its censorship over the regulations in accordance with three methods stated in the Supreme Constitutional Court Law No. 48 of 1979. These methods are remedial as they come after the issuance of the necessary regulations. One of these methods is the method of **sub plea** Where individuals are allowed to argue unconstitutionality while a dispute is being considered. There is also a **referral from the court looking into the matter**, If the court finds that a regulatory text violates the constitution and is necessary to settle the dispute, it shall be referred to the Supreme Constitutional Court. In addition to the previous methods, **there is an opposing method by the Supreme Constitutional Court itself** in terms of exercising its jurisdiction, such as presenting it with a text for interpretation, and the court finds that this text is incompatible with the constitution[35].

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[34]. Alaa Abdel-Moatal, Oversight of the President of the State's Legislative Authority in Exceptional Circumstances, without a publishing house, without a date, p. 200.

[35]. Syed Sayed Mohi Al-Din Al-Zard, Judicial Oversight on the Legality of Administrative Regulations in Palestinian Legislation, "A Comparative Study of Egyptian Law and Islamic Sharia", his doctoral thesis, The

3. The Supreme Constitutional Court's Censorship of the Necessity Regulations in Syria.

In the current constitution issued in 2012, the Syrian constitutional legislator followed the approach of the Egyptian constitutional legislator, transferring jurisdiction over the constitutionality of necessity regulations to the Supreme Constitutional Court Which has become the holder of general competence to monitor the constitutionality of regulations[36].

Article 146 of the Constitution states: *"The Supreme Constitutional Court shall have jurisdiction over the following:*

1- censorship of the constitutionality of laws, legislative decrees, laws and regulations.....".

The current Constitutional Court Law No. 7 of 2014 is the result of the implementation of the constitution and confirmed the jurisdiction of the Constitutional Court in considering the constitutionality of regulations, as Article 11 states: *"A- Censorship on the constitutionality of laws, legislative decrees, laws, and regulations."*

We conclude from the text of the current constitution as well as the text of the current Constitutional Court law that they have transferred jurisdiction from the administrative judiciary to the constitutional judiciary.

It is worth noting that our Supreme Constitutional Court exercises subsequent censorship over the constitutionality of regulations, including those of necessity in accordance with the provisions of the Constitution and the current court law, either through **objection** or by **sub plea**[37] According to the following:

a. Objection of Five Members of People's Assembly.

The Supreme Constitutional Court exercises its jurisdiction over the constitutionality of regulations, including those of necessity, based on a request submitted by five members of People's Assembly, where Article 14 of the current Constitutional Court Law states: "The court shall monitor the constitutionality of regulations or systems according to the following: *"A- If*

Islamic University of Gaza, College of Sharia and Law, 2019, pp. 57-100. - See also, Badr Muhammad Hilal Abu Hoymel, Master Thesis, Al al-Bayt University, College of Graduate Studies, Department of Law, Jordan, Amman, 2014, pp. 101-121. - Hassan Nasser Taher al-Mahna, Oversight of the constitutionality of laws, Iraq as a model, "a comparative study". Master Thesis, College of Law and Political Science - Arab Open Academy in Denmark, Iraq, 2008, p. 58.

[36]. Jamila Al-Sharbaji, The Role of the Supreme Constitutional Court in Oversight of the Constitutionality of Laws in the Syrian Arab Republic between the Constitution of 1973 and 2012, Damascus University Journal for Economic and Legal Sciences, 2013, pp. 5-16.- See also, Nasreen Tolba, Oversight of the constitutionality of laws, Damascus University Journal For Economic and Legal Sciences, Volume 27, Number One, 2011, pp. 502-507.

[37]. Ibrahim Darraji, The Constitutional Court in Syrian Constitutions, A Comparative Historical Legal Reading, London School of Economics and Political Science, LSE, 2020, p. 69.

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five members of People's Assembly object to the constitutionality of regulations or systems within fifteen days following the date of their publication in the Official Gazette. The objection shall be documented in a special register at the court's office.....".

By extrapolating the previous legal text, we find that the constitutional court's censorship over the necessity regulations is subsequent censorship to their issuance. As the law allowed only five members of the People's Assembly to object to the constitutionality of regulation within a period not exceeding fifteen days from the date of its publication[38].

Here we present a number of questions: **First, is this period sufficient to object?**

Do members of the People's Assembly have sufficient experience to know that this regulation is against the constitution? Is the proportion of five members of the People's Assembly a logical one?

We point out that our answers to these questions shall be theoretical because we did not notice any objection to the constitutionality of any regulation that violates the constitution by members of the People's Assembly in Syria.

As for the answer to the questions, we highlight **First** with regard to the duration of the appeal, we believe that this period is not sufficient to object, fifteen days to object to a list is insufficient and we suggest increasing the period to 60 days starting from the date of a publication similar to the appeal with cancellation. **Secondly,** giving members of the People's Assembly the right to challenge only the constitutionality of the regulations was an unsuccessful option. So it would be better if the legislator granted individuals the right to challenge the constitutionality of the regulations so that they could defend their rights against these regulations. **Third** We believe that the proportion of five members of the People's Assembly is a very large percentage. So every time we want to object to the constitutionality of the regulation, we need one-fifth of the members of the People's Assembly to submit the objection. Otherwise, the objection will be rejected. Hence this number is large, which makes it difficult to challenge the regulations so as not to say that it is impossible This percentage is achieved by appealing a list. Therefore, we believe that it is better to suffice with ten or five members of the People's Assembly and to give this right to the heads of the specialized committees of the People's Assembly.

b. Sub-Plea When Appealing the Verdict

The Constitutional Court also exercises its censorship over the regulations through sub-plea in the course of appealing the verdict, as Article 38 of the Supreme Constitutional Court Law No.

[38]. Ibrahim Daraji, ibid., p. 69.

7 of 2014 states: *"The court shall decide on the pleas referred to it by the courts in the course of challenging the verdicts of the unconstitutionality of a legal text, a legislative decree, or a regulation within thirty days from the date of its registry in a special record……"*

Through our analysis of the text of the previous article, we can say that the legal legislator has adopted the method of concentrated sub- plea. That is, it allowed individuals to reach the Supreme Constitutional Court and challenge the constitutionality of regulations in general, including the necessity regulations in the course of challenging the ruling, i.e. before the courts of appeal. Article 39 of the Law of the Current Constitutional Court, the conditions that must be available in the plea, which are: the plea must be serious and that the legal text is necessary for the settlement of the dispute.

We provide some of the most important notes regarding the sub-plea method, including **First** That sub –plea must be presented in the course of an appeal against the judgment. I.e. before the courts of appeal, and thus submitting the plea before the courts of the first instance is legally invalid, This was confirmed by the Supreme Constitutional Court in its ruling, Basis No. 3 of 2020, where it stated, *"…Neither the judge of the court of the first instance of litigation (the basis) nor the head of the executive department has the right to consider what is raised by one of the parties of the lawsuit, case or executive transaction about the constitutionality of a legislative text that must be applied to the fact of the case or an action that must be taken in it, the judge should discuss the constitutionality of that text or consider that a defence of unconstitutionality and he has to abide by the application of the legal text. Furthermore, That referral decision, in this case, is export about the unconstitutionality of that text in the course of challenging the ruling that is issued by the judge according to what article No.2/A/147 has stated of the constitution. Since the resolution of referring to this case is issued by the Head of the Sentence Enforcement Department in Yabroud. Therefore, Provisions governing the defence were not taken into consideration when challenging the unconstitutionality of a legislative text and specified in the Constitution. Accordingly, this challenging should not be accepted in its form"*[39].

The law of the Supreme Constitutional Court in Syria granted the trial court the permission to examine whether or not the conditions for sub-plea are available, but unfortunately, it did not specify the period for this court. A period to refer the plea to the Supreme Constitutional Court, which paves the way for it to stall and prolong the dispute. This is what the Supreme

[39]. Official Gazette of the Syrian Arab Republic, Part One, Issue 9, Damascus, 2020, p. 3

Constitutional Court showed in its ruling Basis No. 1 of 2019[40]. Therefore, we suggest avoiding this loophole and setting a period for the trial court to commit itself to refer the appeal to the Constitutional Court.

V. CONCLUSION

The executive authority is in charge of issuing necessary regulations in exceptional circumstances, which are of very great importance as they include abstract general legal rules, designed to meet exceptional circumstances so as to contribute to ensuring the functioning of state institutions and the preservation of their entity and territorial integrity. At the same time, it is also very dangerous as it includes abstract general legal rules that affect the rights and freedoms of individuals.

In this sense, the constitutional legislator has placed restrictions on the executive authority because of its issuing necessity regulations, they are of two types:

objective restrictions and formal restrictions. The countries under comparison have agreed upon the objective restrictions which are represented by the presence of a state of necessity. On the other hand, Syria did not place any formal restrictions on the authority of the President of the Republic to issue regulations of necessity, unlike France and Egypt.

The existence of theoretical restrictions on the power to issue regulations of necessity does not suffice the purpose. So there must be censorship over the executive authority in its issuance of necessity regulations, and this is double censorship exercised by Parliament and the constitutional judiciary.

Here, it must be noted that parliamentary censorship exists in France and Egypt only, excluding Syria. As for the censorship of the constitutional judiciary, it is present in all the countries under comparison.

It is worthy to mention that the different methods of accessing constitutional justice in the comparative countries were different. France was the only one with previous preventive and immediate censorship, while Egypt was alone in the two methods of plea from the trial court and the method of opposition from the competent court in the exercise of its jurisdiction.

It is noted that the comparison countries have all agreed on the sub-plea method.

(A) Results.

1. Both the French and Egyptian legislators placed formal restrictions on the authority of

[40]. Official Gazette of the Syrian Arab Republic, Part One, Issue (25 Supplement), Damascus, 2019, p. 2.

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the President of the Republic, while the Syrian constitutional legislator did not place formal restrictions on the authority of the President of the Republic to issue necessary regulations.

2. The fifteen-day period granted by the law of the Supreme Constitutional Court in Syria to members of the People's Assembly to challenge the constitutionality of the regulation - from our point of view - is not sufficient.

3. The percentage of one-fifth of the parliament's members required to object before the Constitutional Court is, in our opinion, very large and difficult to achieve.

4. The Syrian constitutional legislator limited the right to refer a sub-plea to the Constitutional Court - to the courts of the second instance. Therefore the courts of the first instance were not allowed to refer this plea.

5. The Syrian legal legislator did not specify in the Constitutional Court law a period for the trial court in order to refer it to the Supreme Constitutional Court. It also gave the trial court the authority to verify the availability of referral conditions, which paves the way to exploit this to prolong the dispute without justification.

(B) Recommendations:

1. We recommend the necessity of placing formal restrictions on the authority of the President of the Republic in Syria. In addition to the substantive restriction that exists in the three countries, such as the requirement that the President of the Republic takes the opinion of the Constitutional Court or the opinion of the Council of Ministers or the Speaker of the People’s Assembly into consideration before issuing the necessity regulations.

2. We recommend that the necessity regulations issued by the President of the Republic in Syria should be presented to Parliament in its first session and that the Council be given the power to approve, cancel or amend.

3. We recommend amending Article 147 of the Syrian Constitution issued in 2012, corresponding to Article 39 of the Supreme Constitutional Court Law No. 7 of 2014, by adding a paragraph allowing individuals to raise a plea of unconstitutionality before the courts of the first instance, not only to the Court of Appeal.

4. We recommend that the constitutional or ordinary legislator determine the period within which the Court of Appeal must transfer the sub-plea of unconstitutionality to the Supreme Constitutional Court. We also suggest that the reasonable period for it to perform this task should not exceed one month.

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VI. REFERENCES

- Ibrahim Darraji, *The Constitutional Court in Syrian Constitutions*, A comparative legal reading, London School of Economics and Political Science, LSE, 2020.
- Azhar Hashem Ahmad Lazhiri, *Censorship of the constitutionality of administrative systems and decisions under the Constitution of the Republic of Iraq for the year 2005 "a comparative study"*, PhD Thesis, University of Baghdad, Baghdad, Iraq.
- Jamila Al-Sharbaji, *Role of The Supreme Constitutional Court in Monitoring the Constitutionality of Laws in the Syrian Arab Republic between the 1973 and 2012 Constitution*,Damascus University Journal of Economic and Legal Sciences, 2013.
- Hassan Nasser Taher Al-Mahna, *Censorship of the Constitutionality of Laws, Iraq as a model, "a comparative study"*.
- Master's Thesis, *College of Law and Political Science* - Arab Open Academy in Denmark, Iraq, 2008.
- Raafat Fouad, *The Constitutional Budget for the Exceptional Powers of the President of the Republic in the 1971 Constitution "a Comparative Study*",Dar Al-Nahda, Cairo,2000.
- Sami Gamal El Din, *Necessity Regulations and Ensuring Censorship over Them*, Knowledge facility, Alexandria, 1982.
- Suleiman Tmawi, *The General Theory of Administrative Decisions "a Comparative Study*".
- Sixth Edition, Cairo: Ain Shams University.
- Shelf Faucet, *The Principle of Legality and the Censorship of the Administration's Subjection to the Law*, Dar Al-Nahda, Cairo, 1976.
- Abdullah Tolba, *Judicial Censorship*, Aleppo University Publications, Aleppo, 2009.
- Othman Abdul-Malik Al-Saleh, *Constitutional System and Political Institution*,publishing house, Cairo.
- Alaa Abdel-Motal, *Censorship of the Legislative Authority of the Head of State in Exceptional Circumstances.* Cairo: Dar Al-Nahda Al-Arabiya,
- Amr Ahmed Hassabo, *Regulations Issued in Exceptional Circumstances According to the Constitution of the United Arab Emirates*, Volume No. 5, No. 4, Police Thought Magazine - Police Research Center - *Sharjah Police General Headquarters Compared to the French and Egyptian Systems*,,Volume 5 Number 4, 1997.

 [ISSN 2581-5369]

- Fahd Youssef Abdullah Al-Juma, *Parliamentary Censorship of Decrees of Necessity*. Folder number (69) Journal of Legal and Economic Research 2019.
- Fahmy, Omar Helmy, *The Legislative Function of the Head of State in the Presidential and Parliamentary Systems "A Comparative Study"*.
- Mohamed Abdel Hamid Abu Zeid, *Prolonged in Administrative Law*, The Arab Renaissance House, Cairo, 1996.
- Mahmoud Sobhi Ali El-Sayed, *Censorship of the Constitutionality of Regulations in Comparative Systems*, Ph.D. thesis in Al-Quq, Department of Public Law, Ain Shams University, Cairo 2011.
- Mamdouh Mohammed Aref Al-Shayeb, *The Constitutional Case Between Political Censorship and Judicial Censorship "a Comparative Study"*, Master's thesis, Faculty of Law, Middle East University, Jordan, Amman, 2015.
- Nasreen Tolba, *Censorship of the Constitutionality of Laws*, Damascus University Journal of Economic and Legal Sciences, Volume 27, Number One, 2011.
- Numan Fateh Al-Dhafiri, *The Legislative Competencies of the Head of State in Contemporary Political Systems with a Special Study on Kuwait*, Ph.D. Thesis, Faculty of Law, Cairo University, 1997.
- Yahya El-Gamal, *The Theory of Necessity in Constitutional Law*, Cairo, 2002.

Foreign References

- ARSAC(R). *La fonction consultative du Conseil constitutionnel*. N 86. *R.F, D, C- N.* 2006.http://www.cairn.inf.
- Lamarque (J). *La théorie de la nécessité et l'article 16de la constitution de 1958*. Mia/juin.*R.D.P*. 1961.
- Rousseau(D). *Droit du contentieux constitonnel.* Paris. Montchrestien. 1995.

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