

---

# Legal Regulations for a State of Health Emergency in Libyan Law and Its Effectiveness in Limiting the Spread of the Covid-19 Virus

Abdallah Faraj Abdallah Benkhashem<sup>1</sup>, Dr. Mat Noor Mat Zain<sup>2</sup>, Dr. Amir Fazlim Jusoh @ Yusoff<sup>3</sup>, DR. Nik Abdul Rahim Nik Abdul Ghani<sup>4</sup>

<sup>1,2,3,4</sup>*Pusat Kajian Syariah, Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia*

*abdo.ly.ukm82@gmail.com<sup>1</sup>, mnmz@ukm.edu.my<sup>2</sup>, amiry@ukm.edu.my<sup>3</sup>, nikrahim@ukm.edu.my<sup>4</sup>*

---

## Abstract

The situation caused by the covid-19 epidemic in numerous countries around the world requires governments to take exceptional measures. In normal circumstances, the state adheres to the application of its ordinary laws, and in exceptional circumstances, it is difficult to apply the same laws to the situation as in the case of the spread of the Corona virus, and a state of emergency is declared. Here, the problem of research arises in the search for the legality of declaring a state of emergency in Libyan legislation and the effectiveness of government decisions in limiting the spread of the Coronavirus. The researcher also aims, through this research, to define the concept of a state of public emergency and a state of emergency in comparative constitutions and the Libyan constitution, and a state of health emergency in Libyan law and the controls for its declaration. Announcing it through analysing the legal texts of the Libyan health law and its success in keeping pace with the epidemic situation in terms of controlling and punishing violators. For the state of emergency in models from different countries and through discussion. Research and analysis of information lead to obtaining a set of results, including the case of the spread of an epidemic, which is considered an emergency, as well as the lack of clarity from a legal and constitutional point of view from the competent authority to declare a state of health emergency in Libya. At the end of the research, we made recommendations that the authorities in Libya may adopt, including the need to intensify the legal and procedural effort to organize emergency states and spread epidemics in the Libyan health law and the upcoming Libyan constitution.

**Keywords:** State of emergency, health regulations, the Covid-19 Virus, health emergency and contagious diseases.

## Introduction

The right to health care is among the most important rights that have been concerned with many international agreements, constitutions and internal legislation of countries, where individuals are supposed to live in a healthy environment away from serious diseases and deadly epidemics that may affect their lives. As it is possible for any society to go through special or exceptional conditions and political, economic and social crises that threaten the normal functioning of the constitutional institutions or posing a threat to the independence of the country. For this purpose, the state has enacted various laws and legislations to protect the citizen's right to obtain health care and contain the spread of the infectious diseases. As the spread of the Corona virus epidemic has become a global danger and threatens the lives and safety of numerous citizens at risk, it has become imperative for the state to intervene to limit the spread of the epidemic, because it is the agency charged with ensuring and maintaining public health. As the spread of the Corona virus epidemic has become a global danger and a threat that puts the lives and safety of numerous citizens at risk, it has become imperative for the state to intervene to limit the spread of the epidemic, because it is the agency charged with ensuring and maintaining public health. Therefore, there is a need to take urgent and unusual measures, such as declaring a state of emergency, based on the well-known Roman rule that "the safety of the people is above the law." In normal circumstances, the state is bound by the application of its customary ordinary laws to confront any health condition. However, there are exceptional circumstances which the state may go through that make it difficult to maintain the pace of applying the same laws to these exceptional situation, this is seen in the case of the spread of the Corona epidemic, which is an exceptional state and a global emergency as announced by various countries and the World Health Organization, therefore in such cases the state resorts to declaring a state of emergency and the application of special and exceptional laws. The definition of a state of emergency is "a set of measures and actions taken by a country on its territory with the aim of controlling general safety and security and preserving public order from collapsing following the occurrence of exceptional

events that threatens the public security such as wars, disasters and the spread of deadly epidemics of unknown origin.” Countries resort to putting in place legal and procedural measures to organize the declaration of a state of emergency in order to be able to control the emergency situation and control public order with minimal human and material damage and to preserve it from collapsing. This includes the Libyan legislator, which enacted legislation to impose a state of emergency when its conditions are met, and it is the subject of our study here to discover out the most important legal texts on health protection and their effectiveness in times of emergency by analysing the legal texts to find out the strengths and weaknesses in them.

### **Issue of the study**

The issue of the study is summarized that in that in normal conditions countries apply their laws, but there are exceptional circumstances and emergency situations such as the case of the spread of deadly epidemics that make it difficult to apply the same laws to the exceptional case as in the case of the spread of the Corona epidemic. Hence the problem of study is regarding the legality and legitimacy of declaring the state of emergency in the Libyan constitution and its effectiveness in limiting the spread of the Corona virus, considering that the declaration of the state of emergency was a measure taken by the Libyan government to limit the spread of the Corona epidemic.

### **Objective of the study**

In identifying the concept of a state of public emergency first, then a state of emergency in comparative constitutions, accessing the analysis of declaring a state of health emergency in Libyan law and the controls for its declaration, and revealing the legislative frameworks that justifies its declaration in internal laws and the extent of their effectiveness in limiting the spread of the Corona virus in Libya during the period of the epidemic through reviewing the most important laws and decisions issued by the Libyan government in order to limit the spread of the epidemic.

### **Study Approach**

In order to answer the issue presented the researcher used a set of approached which the subject of the study required namely, the descriptive analytical approach. Where we use this approach by describing the phenomenon under study, analysing the legal texts concerned with declaring a state of emergency and related to the subject, and collecting various information and ideas. And its inclusion in a scientific way to study the role of declaring a state of emergency in limiting the spread of the epidemic. It also employs the comparative approach for the purpose of comparing the legal regulation of the state of emergency in terms of validity and the competent authority to declare it in models from different countries such as Egypt, Jordan and France and we chose these three different legal systems and these countries took a different approach to confront Corona pandemic.

### **The First Requirement Is to Define the State of Emergency, Its Legal Framework, Its Forms, Causes and Conditions for Its Declaration**

#### **First: The Definition of the State of Emergency**

The term emergency origin refers to an unexpected accident that happens suddenly. So far, there is no single unified definition of the state of emergency among legal scholars, and definitions have been varied according to the different legal systems in each country.

We begin first by defining an international emergency, the constitution of the World Health Organization defines an international emergency as "an extraordinary event that poses a public health threat to other countries through the global spread of a disease and requires a coordinated international response".<sup>4</sup> The state of emergency is defined from its legal perspective. There is an emergency law to confront unusual circumstances during the declaration of a state of emergency and its validity. According to this law, the executive authorities in the state are given great authorities which limit the freedom of movement and restrict the natural rights of citizens with few exceptions as a result of the application of the state of emergency such as the state of emergency when there is a spread of epidemics.

An emergency is defined technically as a state of facing a dangerous threat that threatens the national interests and may affect the stability of a state or endanger its national security and the lives of its residents. Furthermore, this definition is based on a statement of the causes for declaring a state of emergency and the purpose of declaring it in order to preserve the safety of the country. The Egyptian legislator defined the emergency law as "a law regulating a state of emergency". Therefore, it is an exceptional system specified in time and place announced by the government

to face emergency and extraordinary circumstances that threaten the country or part of it, by urgent measures and extraordinary methods in specific conditions and until the threat is removed. Amongst the previous definitions, in our perspective this definition is the closest, as it is somewhat inclusive of the basic characteristic of the state of emergency. In addition to the previous definitions, they mainly focus on clarifying the basic features of the state of emergency as being exceptional and temporary therefore it is a common factor between the definitions that the state of emergency is a result of an exceptional circumstance.

Based on the foregoing, the state of emergency is an exceptional and temporary system to deal with a critical and dangerous situation, whereby the government or the responsible authority in the country declares a state of emergency in the case of danger, natural disasters and health emergencies by adopting a set of measures, including quarantine or a comprehensive and complete closure of the country. In addition, the state must clarify the procedures followed under the emergency law, as it should be possible for the population to be knowledgeable regarding everything that is related to the instruction of the emergency in order to avoid violation.

By analysing all the definitions and clarifications that are presented, it can be said that the state of emergency is a specific constitutional system in most countries. It is resorted to on an exceptional basis, specific in terms of time and place and according to methods and circumstances that differ from one country to another based on the declarations that are established in the country. However, the emergency circumstance is a common factor between all of them until the end of the imminent danger. With regard to the subject of our study, we will review the state of emergency in the Libyan law throughout the next section.

## **Secondly: The Terms and Conditions for Declaring a State of Emergency**

Most of the constitutions and legal legislations of countries contain legal texts that specify the authority entrusted with declaring a state of emergency, whether a state of public emergency or a state of health emergency. In order to give permission to declare a state of emergency, it is a necessity to adhere to the conditions, several of which are objective and others of Formalism. We here review the objective conditions in order to ensure that this authority is not misused and does not exceed the limits of emergency.

### **Section One Objective Conditions**

The objective conditions in declaring a state of emergency are the conditions that if one of these conditions is breached, the declaration of a state of emergency is seriously flawed, and one of these conditions is the condition of the existence of an exceptional circumstance.

The existence of an exceptional and extraordinary situation, whether external or internal dangers such as natural disasters is a requirement in order to declare a state of emergency. The spread of the Covid-19 virus and an example where it is considered an exceptional case and an emergency circumstance which threatens the lives and safety of human beings. It is a requirement to declare a state of emergency, as specified in Article 80 paragraph 6 of the Constitutional Declaration, where it stipulates the competence of the National Congress, which is the legislative body concerned with declaring the state of emergency which is currently represented by the Parliament as it declares and lifts the state of emergency.

The second condition is the availability of the purpose, although the state of emergency is considered an emergency and urgent matter, however there must be a specific purpose for declaring a state of emergency. The purpose of declaring a state of emergency is to achieve a general interest of the state and its residents. The goal and purpose of declaring a state of emergency should not be to a conflict of freedom for individuals and restrict the political goals. For example, as it occurs in various third world countries, the World Health Organization draws attention to this in its recommendation to declare a state of health emergency not to use it to restrict the freedom of individuals in the country for other purposes.

The third condition is the proportionality in the procedures in order to declare a state of emergency, there must be proportionality in the procedures and be in the appropriate extent in order to overcome these circumstances. Thus, there is no excessive use of the right to declare a state of emergency to a greater extent than the size of the disaster or emergency circumstance.

The fourth condition is the insufficiency of the legal base and that the ordinary legal base is unable to meet the circumstances, therefore the ordinary legal base is unable to conduct the emergency situation, which requires exceptional measures. As the internal laws and regulations may not be prepared for such circumstances, here it is necessary to resort to a state of emergency due to the insufficiency of the legal base

## The Second Section Is the Formality Conditions

It is insufficient to adhere to the objective conditions of declaring a state of emergency, but numerous restrictions must be adhered as well, including those under jurisdiction. It is the difference of the authority concerned with declaring an emergency from one system to another, and the time constraint, which is to be limited to a limited period, and the constraint of control, which is that a certain body monitors it. Therefore, responsible authorities must abide by the conditions set for declaring a state of emergency. Here, we compare three different legal systems to clarify the formal differences between them in terms of jurisdiction, time constraint, and oversight.

First, the jurisdictional restriction means that the authority competent to declare a state of emergency differs from one legal system to another. The authority competent to declare a state of emergency in the French system is the head of state, and according to Article 2, the first paragraph of Law No. 55 of April 3, 1955, relating to the state of emergency, Parliament does not declare a state of emergency. It is announced by the government, but it has the decision to extend it or not. Looking at the French situation, the government is competent to declare a state of emergency, and the role of the French Parliament remains oversight and is limited to extension or not. However, for the Jordanian legislation, the jurisdiction expresses the authorities of the king according to his discretion, as he has a discretionary authority in the event of matters that require the declaration of emergency.

Secondly, time constraints the state of emergency as exceptional case as it is a result of an emergency. Therefore, it is necessary to announce a specific period, a time frame for the state of emergency as stipulated in Article No. 55 of April 3, 1955 of the French law. As for the Egyptian law, declaring a state of emergency in accordance with Article 154 of the amended constitution in January 2014, it is not permissible to impose a state of emergency in the country for a period exceeding 6 months and they shall be divided into two periods of three months each. As for Jordanian legislation, the government is within the jurisdiction of the government after obtaining the king's permission in accordance with Article 94 of the Constitution.

Accordingly, the time restriction of the state of emergency is one of the important conditions for declaring the state of emergency in numerous laws and constitutions, and explicitly stipulated in some Egyptian laws, for example, and the announcement of the emergency must indicate when the state of emergency begins and when it ends.

Thirdly, under supervision the state of emergency is one of the exceptional circumstances that numerous countries resort to. Therefore, it must be under supervision so that the state of emergency is not exploited by the authorities for other political goals.

Considering the French law, oversight of measures taken during a state of emergency is subject to the oversight of the legislative authority and the judiciary. Parliamentary oversight is evident in Article 24 of the Constitution of October 4, 1958, which gave parliament the authorities to vote on laws and monitor the work of the government. Whereas, in the Egyptian case, oversight is on the emergency decision itself and not on the measures taken during the period of the state of emergency, and this was clarified by Article 2 of Law No. 37 of 1972, as amended. As for the Jordanian legislation, the king's decisions are not subject to judicial oversight as they are acts of sovereignty.

We identify from the foregoing that in the formal conditions for declaring a state of emergency and through comparison in the table in terms of jurisdiction, time constraint and control in models for three countries and is showed in the following.

The country	Formality conditions		
	Under jurisdiction	In the current time	Under supervision
<b>Jordan</b>	It expresses the authorities of the king according to his discretion, as he has discretionary authority in the event of matters that require the declaration of emergency.	It is within the government's jurisdiction and it must declare a state of emergency when things return to their previous state.	The decisions of the king are not subject to judicial oversight as they are acts of sovereignty.
<b>France</b>	The authority responsible for declaring a state of emergency is the government represented by the Head of State.	The matter is considered before Parliament as stipulated in Article 38 of the French Constitution.	Under French law, oversight of measures taken during a state of emergency is subject to the control of the legislature and the judiciary.

<b>Egypt</b>	The President of the Republic announces after taking the opinion of the Council of Ministers in accordance with Law No. 22 of 2022.	For a specific period not exceeding three months, and to be renewed only for a similar period after the approval of two thirds of the people's representatives.	Oversight is the responsibility of the administrative and constitutional judiciary.
--------------	---	---	---

### Section Three: Emergency visualisation

#### Real State of Emergency and Political State Of Emergency

The real state of emergency is defined as a state of military emergency or martial law. The real state of emergency is applied due to war actions, and the scope of its application is within the locations of war in which the enemy is present.

In the event that a state of war breaks out between two states or an enemy invades a state's territory, these exceptional circumstances require the state to declare military martial law in order to try to confront that danger, which results in personal rights and freedoms being endangered.

As for the state of political emergency, countless countries have gone to implement the system of the state of political emergency. The state of political emergency must be based on justifications other than war, such as if there is an imminent danger to the state, such as a state of armed insurrection, disturbances that are extremely dangerous, or public disasters. The declaration of a state of political emergency is based on the danger arising from war but is not related to hostilities. It should be noted that there are numerous political regimes that exploit the state of emergency to restrict human freedom, and that it is a clear violation of the United Nations principles relating to political and social human rights and the 1984 France Convention.

The executive authority is obligated, in the event that a political emergency is declared, not to be liberated from the rule of law except in accordance with the law proclaiming it. This is in order for the emergency system to not turn into an absolute tyrannical rule, thus when applying the emergency authorities, the legislation is subject to the oversight of Parliament in terms of approving the declaration of a state of emergency and its continuation.

#### 2. Partial state of emergency and total state of emergency

If the state of emergency is related to the existence of previously defined exceptional circumstances, and the authorities within the state cannot confront those circumstances with the authorities established by the legislation and regulations under normal circumstances. Those circumstances and events that have befallen the state, they include all parts of the country, as they may be local and do not appear except in certain places.

A partial state of emergency is that state that is imposed for a specific period and in a specific area by law, when the state is exposed to a threat to its security or security disturbance in that area or the existence of a health or natural disaster. As for the state of total emergency, it is applied in the occasion where there are exceptional circumstances over the entire territory of the state. There is no doubt that the state of the spread of infection is a state of total emergency, and one of its most important legislative effects is the application of quarantine and closure procedures throughout the state, which is the most important effect of the effects of quarantine and closure in Contemporary Law.

#### The Second Requirement: The Legal Basis for the State Of Emergency in Comparative Legislation

We deal with the constitutional basis for declaring a state of emergency in comparative laws in terms of the authority concerned with declaring emergency and controlling it on what was based on its declaration and the conditions we declared. For example, we study the cases of France, Egypt and Jordan.

First, the legal basis for the state of emergency in French law

France has known more than one state of emergency law, the latest of which is Law No. 3 of 1955, which organized the state of emergency whenever exceptional circumstances occur. As its first article states: "If the institutions of the Republic, the independence of the state, the integrity of its territory, or the implementation of its international obligations are exposed to an imminent and grave danger. In the event that the general constitutional authority ceases its regular functions, the President of the Republic shall take the measures required due to these circumstances, after his official consultation with the Prime Minister, the Speakers of Parliament and the Constitutional Council, and addresses a letter to the nation and informs it about these procedures. In addition, it is

included in Law No. 55-385 of 3rd of April, 1955 which is related to the state of emergency and amendments to the conditions for declaring a state of emergency:

- To be announced to the all or part of the country's regions.
- A state of emergency is declared in the event of an imminent danger or events that affects the safety and life of individuals and the unity and safety of the state.
- The state of emergency is declared by a decree issued by the Council of Ministers, indicating the areas of its application.
- The state of emergency can only be extended by a law that specifies the period of its extension and ends with the end of the period.
- The state of siege and the state of emergency cannot be applied together in the same regions.
- As for the end of the state of emergency, if the Parliament does not agree to extend it, it ends at the end of the 12-day period.

As well as the law between the authorities of the administration during a state of emergency and between the law oversight over the state of emergency by the legislative and judicial authorities and the oversight of Parliament, and with regard to the extension of the state of emergency under the law in accordance with the text of Article II-1 of Law No. 55-385 of 1955. The matter is considered before Parliament, as Article 38 of the French Constitution stipulates that “the government may request authorization from Parliament, for a specified period of time, in order to take measures by a decree, which are often within the jurisdiction of the law, in order to implement its programme.” Here, the state of health emergency finds its constitutional basis in Article 38, where the government can resort to Parliament by a decree of health emergency to obtain an authorization. The French Council of State has often endorsed this authorization. As on March 22, 2020, the French legislator approved a draft health emergency law that granted the government a wide range of authorities for a period of two months to fight the Corona pandemic, and the Prime Minister issued a decree that would restrict the movement of citizens.

## **Second, the Constitutional Basis for the State Of Emergency in Jordanian Legislation**

The state of emergency derives its name from its connotation, as it indicates an unstable and abnormal situation that calls upon the competent authorities that have the duty to impel the danger in order to confront this crisis and take the appropriate administrative measures and decisions. First from 1928, then amended in 1947, then 1952, then the defence Law in 1992 and the last amendment in 2011.

Legal Articles 94, 124 and 125 of 1952 of the Jordanian Constitution and its amendments clearly indicated the conditions for declaring a state of emergency. Article 124 of the Jordanian Constitution of 1952 indicated that “If disturbances erupt or evidence of any of that occurs in any part of Transjordan, or when danger is anticipated from a hostile attack on any part of it, the Emir in the Council of Power may declare martial law as a precautionary measure”. Thus, it is considered as the first Jordanian constitution to anticipated an imminent danger that might threaten the state. Therefore, it authorized the declaration of martial law to overcome the danger and protect the state. It is clear from this law that declaring a state of emergency is in accordance with the provisions of the defence Law issued in 1992 expresses the authority of the King in accordance to his discretion. As explained in Article 124-125 of the Jordanian Constitution of 1952 and its amendments, and as announced on March 17, 2020, to combat the Corona pandemic. In case of the occurrence of matters that require declaring a state of emergency the King has discretionary authority based on a decision issued by the Council of Ministers without the oversight by the legislative authority.

The decisions made by the king are not subject to judicial oversight, as they are acts of sovereignty, and the government must cancel the state of emergency when conditions are restored to their previous count and the reasons for declaring the emergency are removed. It is to be noted that the Jordanian legislator inferred the term martial law to denote all emergency dangers without distinguishing between them and the state of emergency.

Under Article 125, the king may declare a state of emergency after a request from the cabinet in response to the occurrence of exceptional circumstances that threaten national security or public safety, including the spread of a pest or epidemic. The law gives the prime minister the authority to place restrictions on certain rights, including freedom of movement, shutting down places of assembly, and closing borders of the state.

Thus, the state of emergency finds its legal and constitutional support in Articles 124-125 of the 1952 Law and the other support in the public defence Law issued in 1992, where the government represented by the Prime Minister may, by the King's instructions, issue a state of health emergency.

The Jordanian King has also issued a royal decree on March 17, 2020, granting authorities to the Prime Minister under the defence Law, which is used in case of an emergency occurring, and under these authorities, the Prime Minister has the right to impose restrictions on gatherings, freedom of movement and health inspection.

### **Third, the Legal Basis for the State Of Emergency in Egyptian Law**

The date of the issuance of the Emergency Law in Egypt goes back to Law No. 165 of 1958 regarding the state of emergency, as an alternative to the martial law that the English were applying in Egypt at the time.

Egypt is considered one of the few countries in the world that did not declare a state of health emergency during the spread of the Corona epidemic in the context of confronting the crisis that resulted due to the spread of the Corona virus (Covid-19). Due to because the state of emergency already being declared and is considered an integral part of the Egyptian legal reality during the past forty years.

However, given that the current situation is linked to a state of health emergency and the spread of an epidemic, it was a necessity to introduce few amendments to the current Law No. 162 of 1958, as it is unable to deal with this type of crisis. The law is specifically designed to suppress any form of dissent that the political system or military emergency may encounter. Therefore, following the approval by Majority of the members of the House of Representatives on the proposed amendments that would give more authority to the President of the Republic during states of emergency. Law No. 22 of 2022 was then issued with the amendment of the provisions of the previous Law No. 162 of 1958 relating to a state of emergency and according to the first article of Law No. 22. Therefore, "The state of emergency in Egypt is declared in case the security or public order in the country, or in a region the country is endangered, whether it is occurred due to general disasters, the spread of epidemics, or the occurrence of internal disturbances or the outbreak of war, or any events that threaten to occur." The second article of the Law deals with the authority to declare and end a state of emergency and what it should include, as the second article of the same law stipulates, declaring a state of emergency and ending it is decision by the President of the Republic, and the decision to declare a state of emergency must include the following: a statement of the case for which it was announced, determining the area it covers, the date of its entry into force and its duration. Article 154 of the amended constitution in January 2014 specifies that a state of emergency shall be declared for a specific period of time not exceeding three months, and shall not be renewed except for a similar period after the approval of two-thirds of the people's representatives. The new law has added various authorities to the President of the Republic which can be applied during a health emergency. On the other hand, we discover that the constitutional and administrative judiciary is the one who carries out the effort of oversight over the decisions taken by the President of the Republic in the case of occurrence of the state of emergency.

Looking at these authorities, we discover that it aims to combat the Corona epidemic or any health emergency in the future. Thus, the Egyptian legislator corrected the defect in the emergency system previously in force by amending the new promulgated by Law No. 22 of 2022, which regulates health emergencies and is the legal basis for in cases such as the spread of epidemics.

Through the foregoing, it has become clear to us that the declaration of a state of emergency is characterized as the strongest manifestation of exceptional legislation. Protection of security and public order. Which enjoys great authorities under the emergency law, in order not use it to exploit the state of emergency in a course of action that harms human rights except in the narrowest limits and to the extent necessary to confront the emergency situation.

We also note that the authority concerned with declaring a state of emergency differs from one state to another, including the royal, presidential and republican systems, and the authority responsible for monitoring the state of emergency from the legislative and judicial authorities and the oversight of Parliament.

### **The Third Requirement: The Legal and Constitutional Basis for Declaring a State of Health Emergency in Libyan Law.**

Through what has been presented, it becomes clear to us that declaring a state of emergency occurs when the state is exposed to exceptional and abnormal circumstances, the occurrence of natural disasters or the spread of a deadly epidemic. Procedures and measures must be in conformity with the provisions of the Constitution and the provisions contained in the laws related to it. The legal and constitutional basis for the legality of these must be identified as well.

#### **Section One: The Constitutionality of Declaring a State of Emergency in Libyan Law**

The most important thing in the constitution of any state is the guarantees it provides and the rights of individuals, but if there is a deterioration in the security situation of the state or it is seriously threatened, whether by external aggression or natural disasters or the spread of diseases and epidemics resulting in the state not controlling the situation, this is called the unstable or high-risk situation of the state. Here, the highest authority in the country according to the system, as we mentioned above, has the authority to declare a state of emergency if the security is in defect or health emergency is significant and this emergency state might include the whole country or part of it.

Following the declaration of a global state of emergency after the spread of the Corona virus covid 19 by the World Health Organization and the Corona Virus (Covid-19) was considered a “pandemic”. In order to confront the Corona epidemic, the legal systems differed about the measures to take, which called for declaring a state of emergency across the country, declaring a state of emergency included steps such as closing the borders and shutting down airports’ operation. Movement became prohibited and all aspects of life are closed in order to prevent the spread of the Corona virus. A state of emergency was declared in Libya on March 17, by Resolution No. (209) of 2020 AD.

We must first observe the historical development of the state of emergency through the different regimes that were once against the Libyan state and what its legal and constitutional foundations are. We first review the state of emergency law since the independence of the Libyan state.

Libya has witnessed numerous developments and states of emergency in the Libyan law. We first start with the period of the monarchy rule in Libya. It was the first constitution to be established for the Libyan state. During this period, the Constitution of the Kingdom of Libya was issued in 1951 AD, where Article 70 of the Kingdom’s constitution for the year 1951 specified the following: “The King announces martial law and a state of emergency, provided that the declaration of martial law is presented to the National Assembly to decide whether to continue or withdraw it.” Here, the first authority to declare a state of emergency rests with the king, who is authorized by the article to declare a state of emergency, however whether it continues or be withdrawn is up to the National Assembly or Parliament. The constitution issued in 1963 kept the same legal text which did not amend or withdraw it, which made the imposition of an exceptional state of emergency within the competence of the executive authority represented by the King at the time.

In the monarchy era, the Libyan legislator made a clear the difference between the martial law and a state of emergency, as the monarchy at the time issued two decrees, the first is related to the state of emergency which was issued on October 5, 1955 AD.

The second is Decree No. 5 of 1956 related to the martial law, where the first article of Royal Decree No. 5 of 1956 mentions that “Martial law may be declared if security or public order in the Libyan territory or in one part of the territory is endangered, whether that is due to the raiding of enemy forces from abroad or the occurrence of internal disturbances or the occurrence of severe natural phenomena or epidemics.” Through the foregoing, it becomes clear to us from these two previous decrees that the Libyan legislator at that time narrowed the state of emergency and martial law in the event of disturbances in public security, or threatening and endangering the lives of residents and citizens, or severe natural phenomena, or epidemics.

With the transition to a new political system in the Libyan state and the change of the system of government from a monarchy to a Revolutionary Command Council, the constitutional declaration of 1969 was issued, where Article 25 of this declaration mentions that “The declaration of martial law and a state of emergency shall be made by the decision of the Revolutionary Command Council whenever the external or internal security of the state is endangered and whenever it deems that this is necessary to protect the revolution and secure its safety.”

It becomes comprehensible to us from the previous legal text, Article (25) that the authority authorized to declare martial laws and a state of emergency is the Revolutionary Command Council, unlike the comparative legislation and the royal constitution, whereas the Revolutionary Command Council has the authority to issue laws, decisions and legislation regulating the state of emergency by the authorization of the law. The article mentioned previously mentions the objective conditions that must be available before the Revolutionary Command Council declares a state of emergency or martial law.

The issuance of Law No. 21 of 1991 regarding general mobilization, whereby general mobilization was defined in Article Two of it as: “The composition of all human, material and moral resources for the Great Jamahiriya and their proper numbers in order to transition the nation from a state of peace to a state of war. In Article 3, the legislator stipulated that the authority competent to announce the mobilization, as assigned to the legislative authority represented in that era in the People’s Congresses, and limited it to two cases of external danger. And the internal danger, where the external danger is the tension in international relations, the danger of war and its outbreak, threatening the security of the state and compromising its sovereignty and independence. The internal danger is the emergence of what threatens the system of government based on the rule of the individuals at that time, as well as the occurrence of disasters or epidemics.

It is to be noted that the martial law has been declared in numerous countries around the world, such as France, Sudan and Egypt. However, it was not declared in Libya at all. As for emergency, it was declared several times during the monarchy era, however following the regime change in September of 1969. Neither of them was declared due to the state not requiring it any further. As it is a state based on an individual regime, therefore it is known that states of emergency and martial law are the most prominent forms in democratic systems.

Furthermore, due to the lack of the full Official Gazette at majority of the legal departments in Libya, there is a law in action for emergency and another for martial Law 21 of 1990. In addition, it does not descend due to the passage



of time, non-use, forgetfulness or ignorance of it. The legal principle says: "Ignorance of the law is not an excuse." It becomes comprehensible to us that what should be noted is that the law which is applicable at this stage is the Law 21 of 1990 regarding general mobilization, as there is nothing to cancel or invalidate it.

## **Section Two: Declaring a state of health emergency in Libyan law to confront the Corona virus**

The spread of the Corona virus as a global pandemic, as declared by the World Health Organization, has resulted in a significant threat to individuals' lives, which required declaring a domestic and global emergency.

### **First, The Concept Of A State Of Health Emergency In Libyan Legislation**

As it has formally explained, the state of public emergency and the concept of a state of health emergency in the International Health Regulations of the World Health Organization, we know the state of health emergency in the internal laws.

Looking back and examining the various Libyan laws and Law No. 106 of 1973 AD, we were unable to not discover a clear and comprehensive definition exhibiting the state of health emergency. However few procedures were mentioned in the Libyan health law that the Ministry of Health is allowed to take, which a definition regarding the state of health emergency in the Libyan law can be deduced and extracted from these procedures.

On this basis mentioned above, it is defined as "the right of the Ministry of Health to take a set of measures which are not often carried out during normal circumstances, such as imposing quarantine or complete sanitary isolation for individuals who are infected or are suspected of being infected, or preventing gatherings that are the cause of the spread of infection, and closing down all places which can also cause the infection to spread.

### **Second, the Legal Basis for Declaring a State Of Health Emergency in Libyan Law**

The measures taken to limit the spread of the Corona epidemic is derived from a set of constitutional and legal texts that recognize the state's responsibility to ensure the safety and health of the citizens from epidemics and infectious diseases. Considering the legal basis for declaring a state of health emergency, it must be addressed in Law 106 of 1973 on health issued on December 13, 1973, as it is the regulator of the state of health emergency and the spread of epidemics and how to deal with them in term of legal means.

The first article of the law clarifies that health care is a right for every citizen and should be guaranteed by the state, which also refers to the cases of the spread of epidemics and deadly diseases, therefore the state is responsible for protecting its citizens and should take care of their health care within its health units as a right established as it is the citizen's guaranteed right. It is a right guaranteed by the law in the text of Article No. 1, and the state is also committed to developing health services and seeking the best medical technology in order to provide the necessary health care procedures for its citizens, which indicates that the state is legally obligated to provide the best health services, including the provision of appropriate vaccine and treatment for epidemics.

Then Article (2) of the same law, touches upon it where it gave the Ministry of Health the authority to supervise public health, its affiliated health institutions, and private institutions operating in the state so that they are subject to the supervision of the Ministry of Health in normal and exceptional circumstances.

Although these diseases are stipulated and identified by the legal text in Article 34, the executive regulations specify that these diseases, which are "Smallpox, relapsing fever, cholera, plague, yellow fever and relapsing fever." However, we can measure the Corona virus (Covid-19) in comparison with these diseases due to of its seriousness in infection and spread, which made the world classify it among the epidemics of the modern era.

On the other hand, this law is also concerned with clarifying the duties of the citizen in support of the state in order to combat epidemics and serious diseases in cases of health emergencies. As specified in Article 34, the citizens are urged to report anyone who is infected or is suspected of being infected, and they should inform the authorities within 24 hours' time frame.

Article 35 authorized the defying of epidemics with great authorities represented in inspecting homes and public areas which are suspected of having the disease, isolating patients and their contacts. In addition to allowing health authorities to seek the assistance of all security authorities if required in order to achieve this. Article 36 of the same law mentions that the Minister of Health may consider a party affected with an infectious disease by a decision from the minister as according to the legal text it is a discretionary authority.

As for the government's decisions, the Libyan government has issued numerous decisions regarding the pandemic and enacted many measures in line with the state of health emergency in Libya and the epidemiological situation is. One of the first decisions of the Libyan government is Law No. (207) for the year 2020 AD on March 16, 2020 AD to form a committee that is to focus and be concerned with following up with the risk of the spread of the Corona

Virus. Afterwards the Libyan government issued the following decisions (215-238-277-288-377-348-326-378-420) for the year 2020 AD. Starting with the declaration of a movement control order, closure of the land and air borders, places of worship, schools, all places of gathering and transportation between cities, and taking preventive measures in order to contain the spread of the disease. Looking at the previous decisions, we discover that all of these decisions are based on Law No. 106 of 1973 AD in their preamble and legal authority.

### **Third, The Legal Penalties For Violators Of The State Of Health Emergency When The Corona Epidemic Spreads.**

Undoubtedly, the Corona Virus outbreak is amongst the epidemics that threaten the public health, which calls for serious administrative control authorities and the application of deterrent penalties to limit the spread of this epidemic. This is done by adhering to the laws and instructions that are issued by the authorities in the country in order to achieve a great purpose purpose, especially in cases of the spread of epidemics, where the authority's orders are related to movement control laws, prohibiting gathering, and following certain health guidelines. The failure to adhere decisions of the authorities will result in the spread of the epidemic and lead to great harm. Therefore, there is a need for a legal restrain. Therefore, there must be a wide range of penalties that can be applied against each violator of the declared state of health emergency. Among these penalties is the penalty stipulated in Article 2 of the decree issued on October 5, 1955, regarding the state of emergency and martial law, where the article stipulated a three-year prison sentence and financial fines for any violator of the decisions issued related to preserving health security and the lives of citizens from the spread of epidemics. Furthermore, as stipulated in Article (136) of Health Law No. (106) of 1973, whoever violates the quarantine measures shall be punished by imprisonment for six months or more with the imposition of a financial fine or both.

### **Fourth, the Most Important Measures Taken By the Libyan Authorities during the Pandemic**

The administrative authority in the state has the right to take several measures in standard and extraordinary circumstances as specified by Law No. 106 of 1973. This includes restricting the freedom of individuals, such as movement restriction which include restrictions of wandering and practicing social activities. These decisions mainly aim to protect and prevent diseases, and the most prominent of these measures are:

#### **Movement restriction, closures, prohibiting gatherings and meetings.**

As the state is working to limit and control the spread of the pandemic and prevent the spread of the virus, control and limit its spread among a large number of individuals. The procedure followed is to limit the spread is restriction of movement, and close of shops and gathering places, except for what is considered as necessities. An example of this is what was specified in Article 36 of Law 106 of 1973 and the decisions of the Libyan government to impose a state of closure and movement restriction. Resolution No. 35 and Resolution No. 238 of 2020, all of aim to limit the spread of the epidemic as well.

#### **Home Quarantine**

Home quarantine refers to the decision of keeping individuals in their homes and not leave them, and it is considered a complementary measure to the movement restriction. As it aims to reducing physical contact with others in order to prevent the spread of the epidemic, an example is seen in in Article No. 36 of Law No. 106 of 1973 and Government Resolution No. 378 of the year 2020.

#### **Quarantine and sanitary isolation**

Quarantine and sanitary isolation refer to a measure taken by the health authorities against individuals who are infected with the epidemic or are suspected of being infected, and they are forced to stay in specific places. These specified locations of isolation might refer to a health isolation centre or other designated by the state for this purpose, as specified by the health law in Article 36.

#### **Shut down of schools and educational institutions**

It has been noted that the majority of countries which have announced that they have taken measures to combat the new Corona virus have taken this measure in order to prevent the spread of the epidemic among students and workers in institutions. Thus, these measures are among the measures taken by the Libyan government used in order to prevent the growth of the pandemic and the spread of the virus.

#### **Health inspection**

Inspection is one of the direct threats to the individual's right to privacy to themselves, their family and their place of residence, to the extent that it can be considered a strict violation of personal freedom. Which made many constitutions and laws limit the state's authority in such a procedure except with the approval of the judicial authorities. However, there is no exception in cases of health emergencies. The Ministry of Health and its affiliated agencies may do these types of inspections in order to limit the spread of the disease, and this is

what we can note in Article 35 granting the authorities to confront epidemics with the authority of inspecting homes and other venues.

#### **Imposing financial fines on violators**

Among the most important restriction measures in order to combat the Corona epidemic, the Supreme Committee in charge of combating the Corona epidemic in Libya imposed fines for violators of precautionary measures in accordance with Article 36 of Law No. 106. Thus it allows the Ministry of Health to take the necessary measures to reduce the spread of the epidemic in the event it occurs. Therefore, the Libyan government issued the Resolution No. 288 of 2020 and set the fines for each violation of the precautionary and preventive measures issued, which starts with 50 Libyan dinars and reaches 10 thousand dinars.

### **Conclusion**

In conclusion, at the end of this study, in which we dealt with the issue of the legality of declaring a state of emergency in the Libyan law and its effectiveness in limiting the spread of the epidemic. This is done through studying the state of emergency in the constitutions of different countries and then the state of emergency in the Libyan constitution through different time eras. In addition, we have also presented how epidemics are controlled through the provisions of the Libyan health law articles and how the Libyan government dealt with the declaration of a state of emergency and the spread of the Corona Virus (Covid-19) through the various decisions it took during the crisis. Therefore, we were able to obtain a set of results and recommendations.

### **The results**

1. Looking back and scrutinizing the various Libyan laws and the Health Law No. 106 of 1973 AD, we were unable to discover a clear and comprehensive definition of the state of health emergency. Rather, there was mention of some procedures in the Libyan health law, from which we can deduce a definition for the state of health emergency.
2. The state of emergency is defined as a state which arises when the nation is exposed to exceptional and unusual circumstances, such as the outbreak of a war or an arise of a threat that effects the internal peace and security, the occurrence of environmental disasters, the spread of highly dangerous epidemics, or other events which lead the state to take exceptional measures once they arise.
3. The lack of clarity from a legal and constitutional from the authority who is responsible for declaring a state of health emergency in Libya, despite the development of a general law text that makes the legislature's authority declare a state of emergency. However, unlike the situation in France, where it is one of the authorities of the president and for the Egyptian law it is a prerogative of the president of the republic.
4. We also concluded that the internal legislation in numerous countries has authorized the declaration of a state of emergency in order to confront exceptional circumstances with the limits and conditions which contained them. Among these legislations is what was mentioned in the Libyan constitutions during its different stages, despite the presence of clear shortcomings in it.
5. The state of emergency is temporary; however, the cascading Libyan constitutions overlooked the need to specify the duration of the state of emergency.
6. The health emergency laws and decisions issued by the Libyan government to contain the Corona (Covid 19) pandemic did not hold legal solutions for the effects of the regulatory measures taken by the authorities during the lockdown and quarantine. Of which these measures include employment contracts, insurance contracts and employee rights.

### **Recommendations**

1. Through the previously mentioned results, we recommend the adoption of a draft constitution which regulates the procedures that are to be followed in the event of exceptional circumstances and a state of emergency during a state of peace and war, alongside its regulations.
2. There is a need to intensify the legal and procedural effort in order to regulate emergencies and the spread of epidemics in the Libyan health law. This is done in order to maintain pace with the rapid development of the medical field and not only follow international health instructions.
3. Despite the provision in Article 34 on diseases and their identification in the legal text, where they are identified as "radical, relapsing fever, cholera, plague, yellow fever and relapsing fever". As there is a lack of mention regarding the Corona virus (Covid-19), we recommend updating the legal text of the article thus include the Corona virus and SARS among the infectious diseases.

## References

- [1] Ahmed Salah El-Din Balto. (2020). The legality of measures taken to preserve public health and their impact on human rights: The experience of the Kingdom of Saudi Arabia in dealing with the Corona pandemic. *The Arab Journal for Security Studies*, No. 36.
- [2] Osama Abdel Ali Khalaf The Constitution and the Constitutional Amendment in the Arab Countries A reading of the amendments to the Egyptian Constitution, *Al-Professor Journal for Humanities and Social Sciences*, 2012 Issue (200).
- [3] Al-Badrawi, Hassan 2000: *Political Parties and Public Freedoms*, University Press, Alexandria.
- [4] Bin Araab Muhammad, Bin Shana Manal, The Mechanism for Defending the Unconstitutionality of Laws in Comparative Constitutional Systems, *Journal of Judicial Jurisprudence*, 16<sup>th</sup> issue, March 2018.
- [5] Bin Manzur (1414) *Dictionary of Lisan Al Arab*, Third Edition, Dar Sader, Beirut, Vol. 1.
- [6] Statement of the World Health Organization official website June 29 June
- [7] 2020. [www.who.int/ar/news/item/](http://www.who.int/ar/news/item/)
- [8] Jassim Amir, The Theory of Exceptional Circumstances and Some of Its Contemporary Applications, *Journal of Tikrit University for Human Sciences* 2007 No. 8.
- [9] Jamal and the muffler. (2020). The fate of private international contracts in light of the imposition of a state of health emergency due to the spread of the new Corona virus (Covid-19) A reading of Moroccan and comparative law.
- [10] Khairi Omar. (2015). The Constitutional Crisis in Libya: Dimensions of the Conflict between Political Components. *Arab Politics* 13<sup>th</sup> issue.
- [11] Dr.. Sherine Shahla. (2021). Psychological and social effects of home quarantine due to the Corona virus (COVID-19. *International Journal of Humanities and Social Sciences*, 26<sup>th</sup> issue.
- [12] Ramadan Bin Zir, Declaring a state of emergency in Libya and its impact on human rights, an article published on the Eye of Libya website on November 16, 2014 on the following link : <https://www.eanlibya.com>.
- [13] Ramadan Bin Zir, Declaring a State of Emergency in Libya and Its Impact on Human Rights, an article published on the Ain Libya website on November 16, 2014 at the following link: <https://www.eanlibya.com> )
- [14] 13. Zakaria Muhammad Abd al-Hamid Mahfouz, *State of Emergency*, Manshayat al-Maaref, Alexandria, 1966, page. 25.
- [15] Salem bin Rashid Al-Alawi, *Administrative Judiciary, a comparative study*, first edition, House of Culture for Publishing and Distribution, Amman, 2009.
- [16] Saad Mamoon Abu Alwan, & Shahinaz Abdul Rahman. (2022). Strategies for activating e-learning in Sudan during global pandemics: the COVID-19 pandemic as a model. *Journal of Information Studies & Technology (JIS&T)*, 2022(1), 7
- [17] Shin, & Ali Saeed Ahmed. (2016). The impact of political and security challenges on the process of democratic transition in Libya. *Scientific Journal of Business and Environmental Studies* No. 1
- [18] 17. Issued by the Libyan Transitional Council on 3/17/2011) at the link <https://security-legislation.ly/ar/law/32001>
- [19] Abdul Rasoul Muhammad Ahmad Ibrahim, *Guarantees of Individuals Under Exceptional Circumstances in the International and Internal Administrative Fields*, Dar Al-Kutub, Amman, 2008.
- [20] Ali Al-Kut, & Al-Bashir. (2016). *The Constitution and Constitutional Amendments in Libya*.
- [21] Alain Bouziane. (2016). The mechanism for impelling unconstitutionality and its impact on activating constitutional justice.
- [22] Al-Aoun & Haitham Ahmed. (2020). Formal and substantive requirements for declaring a state of emergency. *Journal of Legal and Economic Research* 72<sup>th</sup> issue.
- [23] 22. Issa Ni, & rafeeqihi . (2022). The constitution and the rule of law in preserving human rights in light of the Corona pandemic. *Periodically*, 5<sup>th</sup> issue.
- [24] Issa Ni, & rafeeqihi. (2022). The constitution and the rule of law in preserving human rights in light of the Corona pandemic. *periodically* 5<sup>th</sup> issue.
- [25] . Health Law No. 106 of 1973 <https://aladel.gov.ly/home/>
- [26] Al-Qaoud, & Ibrahim. (2021). *International oversight of the state of emergency*.
- [27] Al-Qaoud, Ibrahim Muhammad, Shalghoum, & Muhammad Al-Kamel. (2020). The legality of the state of emergency in international and internal legislation. *Journal of Legal and Sharia Sciences*, No. 16.

- [28] Al Kafawin, Ahmed Ibrahim, The Powers of Administrative Control in Case of Emergency in Jordanian Legislation, Master's Thesis, University of Jordan 2021.
- [29] Maher Yoav Al-Shaddah, Provisions of the Case of Necessity in the Jordanian Constitutional System, Study, Comparative, Journal of the Islamic University of Sharia and Legal Studies, Fourth Issue, 2019.
- [30] Maher Youssef Al-shaddah and h. (2019). The provisions of the state of necessity in the Jordanian constitutional system "a comparative study". Journal of the Islamic University of Sharia and Legal Studies, 27<sup>th</sup> issue.
- [31] Muhammad Ahmed Ibrahim Abdel-Rasoul, Guarantees of Individuals Under Exceptional Circumstances in the International and Administrative Fields, Amman, Dar Al-Kutub, 2008.
- [32] Mohamed Ahmed Swailem, & Mohamed. (2020). The authority of the judge to adapt the contract in light of the Corona pandemic in civil law and Islamic jurisprudence. College of Islamic and Arabic Studies for Girls in Mansoura, No. 22.
- [33] Previous reference to Health Law No. 106 of 1973 <https://aladel.gov.ly/home>.
- [34] Najdat Sabri, The Legal Framework for National Security Analytical Study, Dijla House, first edition, 2011.
- [35] Al-Nujaifi & Mustafa Salem Mustafa. (2017). The state of emergency and its impact on civil human rights (a comparative constitutional study in the Iraqi case). Journal of Legal and Economic Research, No. 5.
- [36] Nasreen Faleh Hassan. (2021). The role of the World Health Organization in dealing with the Corona pandemic - a study in the light of international situations. Lark Magazine Issue 40.
- [37] Nasraween, Laith 2020 Legal regulation to confront the Corona virus pandemic in Jordanian legislation and international agreements "a comparative study", Journal of the Kuwait International Law School, No.
- [38] Wahab, and Hamza. (2022). The role of the legislature during the state of health emergency in Algeria. Journal of Legal Studies
- [39] Bell, J. S. (1995). French constitutional law. Oxford University Press, Incorporated.
- [40] FARDET Christophe, l'Etat d'urgence point de Vue du droit administratif, dans Civitas Europa, 2016
- [41] Haffajee,R, Parmet, W. E., & Mello, M. M. (2014). What is a public health "emergency"? New England Journal of Medicine,