



## **Guarantees of Public Rights and Freedoms in the Face of the Authorities of Exceptional Circumstances: A Study in Light of Comparative Constitutional Law and the Algerian Experience**

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### **Abstract:**

*This article examines the impact of exceptional circumstances on public rights and freedoms, analyzing the delicate balance between state protection and the safeguarding of liberties. It reviews the theoretical framework and judicial evolution of the theory of exceptional circumstances, highlighting its strict application conditions. A comparative study of the constitutional regulation of these circumstances in France, the United States, and Algeria is presented, showing similarities and differences. The analysis particularly focuses on political and judicial oversight mechanisms, emphasizing the pivotal role of administrative justice as a final and effective safeguard against abuse of power, and underscores the importance of judicial independence and civil society vigilance in upholding the rule of law during crises.*

**Keywords:** *Exceptional Circumstances, Rights and Freedoms, Constitutional Law, Judicial Review, Legality, Rule of Law.*

# Garanties des droits et libertés publics face aux autorités dans des circonstances exceptionnelles : une étude à la lumière du droit constitutionnel comparé et de l'expérience algérienne

## **Résumé :**

*Cet article examine l'impact des circonstances exceptionnelles sur les droits et libertés publics, en analysant l'équilibre délicat entre la protection de l'État et la sauvegarde des libertés. Il passe en revue le cadre théorique et l'évolution judiciaire de la théorie des circonstances exceptionnelles, en soulignant ses conditions d'application strictes. Une étude comparative de la réglementation constitutionnelle de ces circonstances en France, aux États-Unis et en Algérie est présentée, montrant les similitudes et les différences. L'analyse se concentre en particulier sur les mécanismes de contrôle politique et judiciaire, soulignant le rôle central de la justice administrative en tant que garantie ultime et efficace contre les abus de pouvoir, et souligne l'importance de l'indépendance judiciaire et de la vigilance de la société civile pour le maintien de l'État de droit en période de crise.*

**Mots clés :** *Circonstances exceptionnelles, droits et libertés, droit constitutionnel, contrôle juridictionnel, légalité, État de droit.*



## Introduction

The construction of the modern state is based on a fundamental, interacting duality: public authority constitutes a necessity for achieving stability and national security, while individual liberty represents the ultimate goal that the state seeks to protect. This balance is the guarantor for realizing the state's final purpose, which is the preservation of human dignity and rights, as affirmed by various international laws and covenants, and enshrined in national constitutions as sacred, inviolable rights. In normal times, constitutional and administrative rules act as a precise regulator of this relationship, setting limits on the exercise of authority and providing guarantees for the protection of liberty, in what is known as the principle of legality (or the rule of law).

This delicate balance, which constitutes the core of the social contract, faces a critical test during exceptional times when the state is exposed to existential threats affecting its entity, territorial integrity, or the stability of its institutions, such as during armed conflicts, severe natural disasters, or widespread internal unrest that disrupts the fabric of society. In these critical moments, the state finds itself compelled to take swift and decisive measures that may not be accommodated by ordinary legal rules. This presents a profound legal and philosophical dilemma: Is the authority permitted, in the name of necessity and saving the state, to restrict or suspend the rights and freedoms it has pledged to protect? Does necessity permit the forbidden without limit, or does necessity itself have boundaries that it must not exceed?

To address this dilemma, the theory of “Exceptional Circumstances” (Théorie des Circonstances Exceptionnelles) emerged in the jurisprudence of public law, particularly through the rulings of the Administrative Judiciary in France. It should be noted that this theory in no way represents a delegation of absolute authority or a complete suspension of the principle of the rule of law. Rather, it is a temporary and alternative legal system that replaces ordinary legality and grants the executive authority broader powers to confront the danger. However, this theory does not leave these exceptional powers unchecked; instead, it surrounds them with a framework of objective and procedural conditions, in addition to judicial review that is exercised after the exceptional circumstance has passed, to ensure that these powers do not deviate towards encroachment or arbitrary use.

### *The Problematic:*

The fundamental challenge facing the theory of Exceptional Circumstances is how to prevent the exception from becoming a permanent practice, and how to avoid turning emergency powers into a pretext for violating fundamental freedoms or legitimizing what resembles a police state under the justification of crises. Accordingly, the main problematic of this article revolves around the following question:

**To what extent do constitutional and legal frameworks succeed in balancing the requirements of exceptional circumstances with the necessity of protecting fundamental rights and freedoms, and what are the effective legal and judicial guarantees to prevent the abuse of authority under these circumstances?**

***Sub-questions:***

- 1) What is the theoretical framework for the theory of exceptional circumstances in public law, and what are its conditions and limits of application?
- 2) How have comparative constitutions (French, American, Algerian) regulated the powers of exceptional circumstances, and what are the similarities and differences between these models?
- 3) What is the nature and limits of the political and judicial oversight exercised over administrative actions during exceptional circumstances, and what is its practical effectiveness?
- 4) Do the established guarantees constitute sufficient and effective protection for rights and freedoms, or do they remain formal guarantees that can be easily circumvented?

***Significance of the Study:***

This study derives its value from addressing a vital and evolving topic that constitutes one of the fundamental pillars of constitutional law and human rights. This importance is magnified in light of current global crises, including security threats such as terrorism, health pandemics, and environmental risks. These circumstances have driven many states, including those most entrenched in democratic practice, to resort to declaring states of emergency, raising an ongoing jurisprudential and philosophical debate about the required balance between state authority and individual liberty in today's world.

### ***Objectives of the Study:***

- 1) To establish the theory of exceptional circumstances, define its basic concepts, and distinguish it from similar theories.
- 2) To provide an in-depth comparative analysis of the constitutional regulation of exceptional circumstances in different legal models.
- 3) To evaluate the effectiveness of oversight mechanisms, especially the role of the administrative judiciary, in protecting rights and freedoms during these circumstances, citing pivotal judicial rulings.

### ***Methodology:***

To answer this problematic, we will primarily rely on the descriptive analytical method to describe and analyze the constitutional and legal texts, jurisprudential opinions, and judicial rulings related to the subject. We will also extensively use the comparative method to weigh the different constitutional models (French, American, Algerian) with the aim of extracting similarities and differences and identifying best practices and guarantees in this field.

## **1. The Theoretical Framework of the Theory of Exceptional Circumstances in Public Law**

The theory of exceptional circumstances is considered one of the most prominent jurisprudential and judicial contributions in the field of public law. It represents a balanced attempt to reconcile the requirements of the principle of legality—which mandates the administrative apparatus to be subject to the law—with the necessity of maintaining the continuity of public services and safeguarding the entity and safety of society, even in the



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most difficult and trying circumstances. It is also a theory of crisis par excellence that recognizes that the law must be flexible enough to save the state from collapse, but at the same time, it must remain strong enough to prevent it from turning into an instrument of oppression.

## 1.1. Concept and Jurisprudential Establishment

### 1.1.1. *Definition and Philosophy of Exceptional Circumstances:*

These circumstances can be defined as: Exceptional factual or legal situations characterized by seriousness and suddenness, which are either existing or imminent, and involve a fundamental threat to the state's entity, stability, or vital institutions, in a manner that makes it impossible to address them within the framework of ordinary legal mechanisms. This justifies granting the authority exceptional and temporary powers that exceed the limits of ordinary legality with the aim of returning to that legality as soon as possible.<sup>1</sup>

The philosophy of this theory is based on two fundamental ideas:

- **The Idea of Necessity:** These exceptional circumstances justify granting the administration exceptional powers, for necessity is the mother of law, as the French jurist Maurice Hauriou noted. This necessity justifies the temporary deviation from the scope of traditional legality. However, it should be emphasized that this necessity is neither absolute

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<sup>1</sup> Ammar Awabdi, *Nazariyyat al-Zorouf al-Istithna'iyyah wa Tatbiqatuha fi al-Qanun al-'Am: Dirasah Muqaranah (The Theory of Exceptional Circumstances and its Applications in Public Law: A Comparative Study)*, 2nd ed., University Publications Office, Algiers, 2005, p. 45.

nor interpreted on a purely political basis. Rather, it is a legal necessity constrained by objective conditions and temporal controls that prevent it from turning into a permanent justification for authoritarian expansion. Instead, it is a restricted legal necessity subject to judicial review, which verifies its actual existence and the proportionality of the measure to it.<sup>2</sup>

- **The Idea of the Continuity of the State and Public Services:** The primary goal of these exceptional powers is not to undermine the law, but to save the law and the constitutional order itself by maintaining the continuity of the vital institutions of the state, which might completely cease functioning during crises, thus threatening the collapse of the entire political entity.<sup>3</sup>

### *1.1.2. The Precise Distinction Between Exceptional Circumstances and Similar Concepts: - Theory of the De Facto Officer (Le fonctionnaire de fait):*

This theory addresses a different legal problem; it does not aim to justify the competent official's violation of laws, but rather legitimizes the actions issued by a person who lacks the legal capacity to exercise the function but undertook its duties under the pressure of sudden exceptional circumstances. It corrects a defect in the form of the decision (lack of competence of the issuer), whereas the theory of exceptional circumstances justifies a defect in the

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<sup>2</sup> Maurice Hauriou, Précis de droit administratif et de droit public, 11e édition, Sirey, Paris, 1927, p. 430.

<sup>3</sup> Sulaiman Muhammad Al-Tamawi, Al-Nazariyyah al-'Ammah lil-Qararat al-Idariyyah: Dirasah Muqaranah (The General Theory of Administrative Decisions: A Comparative Study), 6th ed., Dar Al-Fikr Al-Arabi, Cairo, 1991, p. 134.



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subject matter of the decision (violation of procedure to the law).<sup>4</sup>

**Acts of Sovereignty or Acts of Government (Les actes de gouvernement):** Acts of sovereignty constitute a special category of decisions issued by the executive authority, related to its relations with other authorities internally or the state's international relations. Judicial jurisprudence has settled, based on considerations related to the specificity and nature of these acts, on exempting them from judicial review and keeping them within the circle of non-reviewability. The fundamental difference is that acts of sovereignty are completely immune from any judicial review, while actions issued under exceptional circumstances remain subject to judicial review.<sup>5</sup>

**- Discretionary Power (Discretionary Power):** In normal circumstances, the law leaves the administration a margin of discretion. Discretionary power is an authority granted by law and exercised within the framework of the law. As for the powers granted under exceptional circumstances, they are powers that exceed the limits of ordinary law and derive their legitimacy from the exceptional circumstance itself.<sup>6</sup>

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<sup>4</sup> Massinissa Amrous, *Al-Muwazzaf al-Fi'li fi al-Qanun al-Idari al-Jaza'iri* (The De Facto Officer in Algerian Administrative Law), Master's Thesis, Faculty of Law, Mouloud Mammeri University - Tizi Ouzou, 2013, p. 58.

<sup>5</sup> Mohamed Sghir Baali, *Al-Qanun al-Idari: Al-Tanzim al-Idari wal-Nishat al-Idari* (Administrative Law: Administrative Organization and Administrative Activity), 5th ed., Dar Al-Ulum for Publishing and Distribution, Annaba, 2009, p. 211.

<sup>6</sup> Majid Ragheb El-Helw, *Al-Qanun al-Idari* (Administrative Law), Dar Al-Matbouat Al-Jami'iyah, Alexandria, 1999, p. 560.

### ***1.1.3- Historical Roots and Judicial Evolution of the Theory:***

The roots of the concept of exceptional powers are based on ancient Roman legal heritage, and later the writings of social contract philosophers such as Jean-Jacques Rousseau contributed to the crystallization and development of this concept.<sup>7</sup> However, the modern legal establishment of the theory is a French judicial product par excellence, and it developed through a series of historical rulings by the Council of State (Conseil d'État):

- **Heyriès Ruling (June 28, 1918):** These judicial precedents are considered the foundational nucleus of the theory of exceptional circumstances, where the French Council of State, in a historic ruling, affirmed the legality of an exceptional decree that violated existing legal guarantees for employees, justifying this by the circumstances of the First World War and the necessity of ensuring the continuity of vital public services.<sup>8</sup>

- **Dame de Dol et Laurent Ruling (February 28, 1919):** This judicial ruling represents a decisive turning point, as it ended the validity of the exceptional legality affirmed by the previous ruling, and reasserted the supremacy of the ordinary constitutional framework as the sole source of legitimacy for public decisions, thus preventing the exception from becoming a permanent rule. In this ruling, the Council refused to approve an administrative measure that excessively affected individual freedoms, confirming that public freedoms are not suspended even in wartime and that its oversight extends to include the appropriateness of the measure taken.<sup>9</sup>

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<sup>7</sup> Jean-Jacques Rousseau, *Du Contrat Social*, (Livre IV, Chapitre VI), 1762.

<sup>8</sup> Conseil d'État, 28 juin 1918, Heyriès, Rec. p. 657.

<sup>9</sup> Conseil d'État, 28 février 1919, Dames de Dol et Laurent, Rec. p. 208.



## 1.2. Strict Conditions for the Application of the Theory of Exceptional Circumstances:

In order for this theory not to turn into a back door for despotism, the judiciary and jurisprudence have established a set of precise and integrated conditions that must be met collectively, all of which are subject to the subsequent review of the administrative judge.

- **Objective Conditions (Related to the nature of the circumstance itself): - Existence of a Grave, Imminent, and Exceptional Danger:** The activation of these powers requires that the threat be extremely serious and unusual, such as wars or severe natural disasters, and that it be acute and imminent, either already commenced or with confirmed indicators of its close occurrence, and that it be unusual and unpredictable in the ordinary course of affairs.<sup>10</sup>

- **Impossibility of Countering the Danger with Ordinary Legal Means:** This element represents the practical embodiment of the necessity condition, requiring proof of the administration's total inability to counter the danger using the available traditional legal means. This justifies resorting to exceptional powers as a last and indispensable resort, as the exception is only invoked when the application of the rule is impossible.<sup>11</sup>

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<sup>10</sup> Ammar Boudiaf, *Al-Qarar al-Idari fi Qada' Majlis al-Dawlah al-Jaza'iri* (The Administrative Decision in the Jurisprudence of the Algerian Council of State), 2nd ed., Dar Al-Jusour for Publishing and Distribution, Algiers, 2014, p. 188.

<sup>11</sup> Abd Al-Ghani Bassiouni Abd Allah, *Al-Qanun al-Idari: Dirasah Muqaranah li-Usus wa Mabadi' al-Qanun al-Idari wa Tatbiquha fi Misr* (Administrative Law: A Comparative Study of the Foundations and Principles of Administrative Law and their Application in Egypt), 1st ed., Mansha'at Al-Ma'arif, Alexandria, 1998, p. 450.

## **2- Formal and Procedural Conditions (Related to the characteristics of the measure taken):**

**- The Measure Must Be Temporary in Nature:** Exceptional powers are constrained by the condition of temporality; they are existentially linked to the exceptional circumstance, neither preceding it nor remaining after it. Converting any exceptional measure into a permanent rule constitutes a clear violation of the principle of legality and a grave breach of the legal principles governing the state.<sup>12</sup>

**- The Measure Must Aim Exclusively to Achieve the Public Interest:** The sole motive must be the protection of public order; any other motive (political, personal) renders the decision tainted with the defect of abuse of power (*détournement de pouvoir*).<sup>13</sup>

**- The Measure Must Be Proportional to the Gravity of the Danger and Necessary to Achieve the Goal:** This element represents the essence of the principle of proportionality, which dictates that exceptional measures must be genuinely necessary to confront the danger and proportionate in their severity and scope to the gravity of the threat, so that they do not exceed the limits required to achieve the legitimate goal. Otherwise, these measures are considered an excess of authority and tainted with a gross error of assessment.<sup>14</sup>

## **2. Constitutional Regulation of Exceptional Circumstances (A Comparative Study)**

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<sup>12</sup> Ammar Awabdi, Previous Reference, p. 112.

<sup>13</sup> Sulaiman Muhammad Al-Tamawi, Previous Reference, p. 141.

<sup>14</sup> Massoud Chihoub, *Al-Mabadi' al-'Ammah lil-Munaza'at al-Idariyyah: Nazariyyat al-Ikhtisas (General Principles of Administrative Disputes: Theory of Jurisdiction)*, Part One, 4th ed., University Publications Office, Algiers, 2005, p. 301.



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Modern constitutions have sought to constitutionalize the theory of exceptional circumstances, i.e., to regulate it within explicit constitutional texts with the aim of legitimizing it, codifying it, and setting controls for its exercise.

## **2.1. The French Model: Between Temporary Dictatorship and Republican Necessity (Article 16)**

Article 16 of the 1958 Constitution is an example of granting very broad powers to the President of the Republic. It was designed to enable the head of state to act decisively in times of major crises.

### ***2.1.1. Conditions for the Application of Article 16:***

**- The Article Sets Two Strict Conditions:** This situation is considered one of the most severe cases that justify the activation of exceptional powers, namely when there is an existential threat to the state's entity or its national independence, or when the regular functioning of constitutional institutions is disrupted in a way that threatens the collapse of the basic structure of governance.<sup>15</sup>

**- Granted Powers and Controls:** This article authorizes the President of the Republic, after formal consultations, to take the measures required by the circumstances, leading to an unprecedented concentration of powers in his hands. These exceptional powers have sparked wide constitutional controversy, with the late French President François Mitterrand describing them as a permanent coup d'état due to their exceptional nature and impact on the principle of

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<sup>15</sup> Didier Maus, *Les grands textes de la pratique institutionnelle de la Ve République*, 10e édition, La Documentation Française, Paris, 2011, p. 45.

separation of powers.<sup>16</sup> Despite this, the Constitution placed restrictions: the Parliament remains in session, the Constitution cannot be amended, and the Constitutional Council has the power to review the continuation of the circumstances after 30 days (since the 2008 amendment).<sup>17</sup>

## **2.2. The American Model: The Principle of “Checks and Balances” in the Face of Crises**

The American model fundamentally differs in this regard. The US Constitution does not contain a single, central text that consolidates emergency powers; rather, these powers are distributed between Congress, through the right to declare war and suspend the writ of habeas corpus, and the President, in his capacity as Commander-in-Chief of the Armed Forces, within a framework of established checks and balances that prevents the concentration of powers.<sup>18</sup> These powers are subject to strict oversight by the judiciary, and the Supreme Court has played a pivotal role in defining the limits of the President’s powers, as in the case of *Youngstown Sheet & Tube Co. v. Sawyer* (1952), and the case of *Hamdan v. Rumsfeld* (2006), which affirmed the illegality of the exceptional military tribunals at Guantanamo.<sup>19 20</sup>

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<sup>16</sup> Dominique Rousseau, *Droit du contentieux constitutionnel*, 11e édition, LGDJ, Paris, 2016, p. 350.

<sup>17</sup> François Mitterrand, *Le Coup d’État permanent*, Plon, Paris, 1964.

<sup>18</sup> Constitutional Law No. 2008-724 of July 23, 2008, relating to the modernization of the institutions of the Fifth Republic.

<sup>19</sup> U.S. Constitution, Article I, Section 9.

<sup>20</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).



### **2.3. The Algerian Model: The Obsession with Constitutional Codification and the Multiplicity of Exceptional Systems**

Successive Algerian constitutions have been characterized by a detailed and precise regulation of exceptional circumstances, dedicating four separate and distinct cases for these circumstances, in a clear effort to accurately control and codify them in a way that limits the scope of discretion.<sup>21</sup>

#### ***2.3.1. State of Emergency and State of Siege (Article 99 of the 2020 Constitution):***

Exceptional circumstances are regulated in the Algerian Constitution within four distinct cases, where the President of the Republic decides to declare them for a specific period after constitutional consultations, and they can only be extended with the approval of Parliament. The state of siege is considered the most serious as it involves the transfer of civil powers to the military authority, while the state of emergency grants broad administrative and security powers to the Walis (Governors) and the Minister of the Interior.<sup>22</sup>

#### ***2.3.2- Exceptional State (Article 100):***

This state is closest in nature to Article 16 of the French Constitution, where the President of the Republic has the authority to declare it when there is an imminent danger

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<sup>21</sup> Hamdan v. Rumsfeld, 548 U.S. 557 (2006).

<sup>22</sup> Fawzi Oussedik, *Al-Wafi fi Sharh al-Qanun al-Dusturi al-Jaza'iri: Al-Nazariyyah al-'Ammah lil-Dawlah wal-Dustur* (The Comprehensive in Explaining Algerian Constitutional Law: The General Theory of the State and the Constitution), Part One, 2nd ed., Dar Al-Kitab Al-Hadith, Algiers, 2017, p. 315.

threatening the country, while retaining the power to take all necessary measures to confront it, with the Parliament automatically remaining in session without the need for a convocation.

### **3- State of War (Article 102):**

This state constitutes the highest degree of constitutional emergency, requiring the approval of a qualified majority (two-thirds of the members of both parliamentary chambers). It results in the temporary suspension of constitutional provisions and the concentration of all powers in the hands of the President of the Republic, representing an exceptional transition in the nature of the political system.<sup>23</sup>

## **3. Oversight of Administrative Actions Under Exceptional Circumstances**

Granting the executive authority broad powers does not mean immunizing its actions from all oversight, as oversight is the true safety valve for the protection of rights and freedoms.

### **3.1. Political Oversight: Between Constitutional Guarantee and Limited Effectiveness**

Parliament is considered the main guardian for the application of exceptional circumstances, as it exercises its effective oversight through its authority to discuss and approve their declaration and extension, which constitutes a fundamental guarantee against any arbitrary exploitation of

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<sup>23</sup> Said Boualchair, *Al-Qanun al-Dusturi wal-Nuzum al-Siyasiyyah al-Muqaranah: Al-Nazariyyah al-'Ammah* (Constitutional Law and Comparative Political Systems: The General Theory), Part One, 6th ed., University Publications Office, Algiers, 2005, p. 250.



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these powers.<sup>24</sup> Its continuous session throughout this period<sup>25</sup> However, these factors collectively constitute fundamental obstacles to effective parliamentary oversight, as executive dominance and political loyalty mechanisms limit the possibility of holding the government accountable, while the confidential nature of information prevents oversight based on full knowledge, often turning the oversight process into a formal procedure.<sup>26</sup>

### **3.2. Judicial Oversight: The Last Resort and the Faithful Guardian of Legality**

- Judicial oversight, undertaken by the administrative judiciary, is considered the true and effective guarantee for the protection of rights and freedoms. The administrative judge exercises his oversight at several levels:
- Oversight of the material existence of the facts and their legal qualification.<sup>27</sup>
- Oversight of the principle of proportionality through reviewing the manifest error of assessment, where the judge balances the advantages of the decision for the

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<sup>24</sup> Nadia Fadil, *Halat al-Harb fi al-Dustur al-Jaza'iri: Bayna al-Taqyid al-Dusturi wal-Sultah al-Mutlaqah* (The State of War in the Algerian Constitution: Between Constitutional Restriction and Absolute Authority), *Algerian Journal of Legal and Political Sciences*, Vol. 55, No. 2, 2018, p. 412.

<sup>25</sup> Article 99 of the Algerian Constitution of 2020.

<sup>26</sup> Hussain Bouchareb, *Al-Damanat al-Dusturiyyah lil-Huquq wal-Hurriyat fi al-Jaza'ir* (Constitutional Guarantees of Rights and Freedoms in Algeria), PhD Thesis, Faculty of Law, University of Algiers 1, 2016, p. 215.

<sup>27</sup> Rachid Louarari, *Al-Raqabah al-Siyasiyyah 'ala A'mal al-Sultah al-Tanfidiyyah fi Dhill al-Zorouf al-Istithna'iyah* (Political Oversight over the Actions of the Executive Authority under Exceptional Circumstances), *Journal of Legal and Economic Research*, Vol. 15, No. 1, 2019, p. 112.

public interest against its disadvantages represented by the infringement of rights.<sup>28</sup>

- Oversight of the purpose of the measure to prevent any abuse of power from achieving the public interest.<sup>29</sup>

This judicial oversight has been manifested in prominent jurisprudence, such as in the case of Cédric D before the French Council of State in 2016, where the court restricted the application of house arrest measures during the state of emergency, emphasizing the necessity for these measures to be precisely justified and proportionate to the specific individual threat, and not merely general collective measures.<sup>30</sup> In the United States, the case of *Boumediene v. Bush* (2008) granted Guantanamo detainees the right to challenge the legality of their detention.<sup>31</sup> In the Algerian context, the Council of State exercised its effective oversight over the measures taken during the crisis known as the Black Decade, where it annulled a number of them due to the lack of the proportionality condition, affirming in its rulings the principle of the state's submission to the rule of law even in the darkest circumstances and most difficult moments.<sup>32</sup>

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<sup>28</sup> Ammar Boudiaf, *Al-Wajiz fi al-Qanun al-Idari* (The Concise in Administrative Law), 3rd ed., Dar Al-Jusour for Publishing and Distribution, Algiers, 2011, p. 255.

<sup>29</sup> Massoud Chihoub, *Al-Mabadi' al-'Ammah lil-Munaza'at al-Idariyyah: Nazariyyat al-Da'wa* (General Principles of Administrative Disputes: Theory of the Case), Part Two, 4th ed., University Publications Office, Algiers, 2005, p. 178.

<sup>30</sup> Mohamed Fouad Mohanna, *Al-Qanun al-Idari al-Misri wal-Muqaran* (Egyptian and Comparative Administrative Law), Part One, Dar Al-Ma'arif, Alexandria, 1987, p. 520.

<sup>31</sup> Conseil d'État, 6 juillet 2016, Cédric D., n° 398234.

<sup>32</sup> *Boumediene v. Bush*, 553 U.S. 723 (2008).



## Conclusion

Through this comparative legal analysis, it is clear that the theory of exceptional circumstances does not represent an escape from legal rules, but rather constitutes an alternative and temporary legal framework that replaces ordinary legality during times of crisis, within strict temporal and substantive controls, and effective subsequent oversight. Contemporary constitutions have sought to precisely regulate this exceptional state and establish multi-level oversight mechanisms to maintain the balance between the requirements of confronting crises and the necessity of protecting rights and freedoms.

However, the study showed that constitutional guarantees and political oversight may remain insufficient in the face of the executive authority's overreach. Hence, judicial oversight emerged as the last safety valve and the impregnable fortress for defending rights and freedoms. The judiciary, through its courageous historical jurisprudence, has proven its ability to enforce the rule of law even in the darkest circumstances, through its precise oversight of the existence of the circumstance, the proportionality of the measure, and its goal. In response to the main problematic, it can be asserted that ensuring the desired balance between the requirements of exceptional circumstances and the necessity of safeguarding rights and freedoms does not depend solely on the competence of the constitutional and legal frameworks, but is contingent upon the effectiveness of the accompanying oversight mechanisms, especially independent and robust judicial review. Legal texts, no

matter how precise, remain inadequate to achieve the required balance without an independent judiciary capable of imposing the rule of law as a final guarantor against any potential deviation. Courageous judges who believe in their mission are capable of standing up to authority when it deviates, and are aware of their role as guardians of legality and protectors of fundamental rights, which are the essence of the existence of the rule of law.

Ultimately, the relationship between authority and liberty under exceptional circumstances remains a dialectical relationship and a permanent tension, whose final form is determined not only by the texts of the constitution and the law, but also by the degree of maturity of democratic culture in society, the vigilance of public opinion, and the courage of judges in defending the principles they have sworn to protect.

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6. Article 99 of the Algerian Constitution of 2020.
7. *Boumediene v. Bush*, 553 U.S. 723 (2008).
8. Conseil d'État, 28 février 1919, *Dames de Dol et Laurent*, Rec. p. 208.
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