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LEGISLATIVE GUARANTEES OF THE RIGHT TO FREEDOM OF OPINION DURING A STATE OF EMERGENCY

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ABSTRACT

Political rights are among the pillars on which the modern legal state is based، especially the right to express an opinion، as it is in addition to being one of the important political rights that find its foundations in constitutions and international conventions، it is also a human right in democratic countries، and on this basis، the right to express an opinion finds its basis in constitutions and international charters on two sides، the first being among the political rights، and the second being one of the basic human rights. Modern countries have guaranteed this right and the means of expressing it with various guarantees that prevent deprivation of it، restriction or control under the ordinary laws in force in normal circumstances، but the life of states، like the lives of persons، sometimes go through exceptional circumstances that threaten their existence and basic pillars، and therefore need emergency laws to face these circumstances، as those ordinary legal rules in force are not able to face these circumstances، as they grant the powers of the state based on the application of the state of emergency. Exceptional powers to face these circumstances، and these powers may lead to prejudice to the rights and freedoms of individuals، including the right to express an opinion، as the interest of protecting the state and its institutions، if compared to the rights of individuals and their fundamental freedoms، the balance tends in favor of protecting the survival of the state and its political system، but this prejudice to rights and freedoms، including the right to express an opinion as one of the basic political rights، and what carries with it human rights should not reach the extent of compromising the essence and content of that right. Even under these exceptional circumstances، the means of protecting it will rise and tend to those measures taken in those circumstances that are null and void and not legally protected.

Keywords: Political rights. Start. Opinion، guarantees of the right to opinion، rights and freedoms. State of emergency

Introduction

First: Introductory introduction to the subject of the study:

The right to express opinion and expression is one of the most important rights guaranteed by

heavenly laws, and guaranteed by international conventions as well, and perhaps the right of opinion and expression is one of the most important rights in human life, it is one of the basic rights, and freedom of opinion and expression is one of the components of democratic systems and detracting from them is a derogation from the right democratic governance, and then that freedom is a basic right, and it is agreed that freedom of opinion is different from freedom of expression, as freedom of opinion is an intellectual process All constitutions, including the Constitution of Iraq for the year 2005, guaranteed freedom of opinion and expression, but that feature may be offset by some influences, the most important of which is the declaration of a state of emergency or a state of emergency circumstances, which is the situation to which society or the state may be exposed to imminent danger, and in such cases the authorities may resort to restricting the expression of opinion, despite the lack of agreement on that case However, there are some justifications that support this, based on the preservation of national security, which led to differences in visions about restricting freedom of opinion and expression, or not restricting it, and therefore in this study we present the right to express and express an opinion in emergency situations.

Second: The importance of the study:

The importance of the study revolves around two axes, the first is the academic axis, as the study of the reality of expressing opinion and legal guarantees as stated in the Iraqi constitution and comparative legislation has become one of the topics that need continuous development and continuous academic effort, because it is one of the constantly renewed topics, due to the nature of the development of this right, and therefore the study wants to provide the Iraqi library in particular and the Arab library in general with this type of studies. At the practical level, the study and analysis of the position of the Iraqi constitution and comparative constitutions has become of great importance in order to develop the guarantees provided for this right at the Iraqi level.

Third: The problem of the study:

The problem of the study emerges in terms of how to balance between political rights, especially the right to express an opinion and the emergency exceptional circumstances that afflicted the state and threaten its existence and legal entity, preserving the right to express an opinion means allowing emergency circumstances to undermine the pillars of the state, and at the same time it is not enough to accept the waste of this right under the pretext of protecting the entity of the state, and other problems that can be summarized as follows:

1. The right to express one's opinion has been guaranteed by modern constitutions, including the Constitution of the Republic of Iraq of 2005, but to what country can this right be activated in a state of emergency.
2. What is the role of the regulatory authorities (ordinary and administrative judiciary) in preserving the right to express an opinion in case of emergency?
3. What mechanisms are the guarantees guaranteed by the Iraqi Constitution for freedom

of opinion and expression?

Fourth: Study Methodology:

We will rely on the following curricula in the study:

1. Analytical approach: It is based on analyzing the legal texts of emergency laws and opinions of jurisprudence and discussing them in order to reach the position of the Iraqi constitution and comparative constitutions in expressing opinion, especially in emergency situations.
2. Applied Curriculum: It is based on the promotion of jurisprudential opinions and legal texts with judicial rulings related to the subject of study.

Objectives of the study:

This study aims to achieve the following:

1. Identify the expression of opinion and clarify its legal basis.
2. Identify the content of the state of emergency and present the position of Iraqi law on it, especially the 2005 Constitution.

1. Analyze the legal safeguards to protect expression under states of emergency as stated in Iraqi and comparative laws.

1. What is the right to freedom of opinion?

Freedom of expression represents one of the basic pillars of intellectual freedom, as it carries with it several types of freedoms, such as freedom of the press, freedom of publishing and media from radio, television, theater and other tools of expression of opinion, and it also includes freedom of education and learning, including the freedoms of publishing books and opinions, this partial freedom takes its amount and nature in the extent and size of freedom of opinion.

Researchers and writers in Iraq and others in Arab and foreign countries have dealt with the concept of freedom of opinion and expression, with different definitions, and it can be said that there is no comprehensive definition that prevents freedom of opinion and expression, but each side dealt with according to its own vision, and due to the differences in expression of freedom of opinion, the importance of this freedom has stemmed as one of the most important freedoms, which led to the existence of distinctive characteristics of freedom of opinion and expression, and then in order to have a general idea of freedom of opinion and expression, we must point out. To the concept of the right to freedom of opinion and expression, and we present the importance of this right, as well as explain the characteristics of the right to opinion and expression through three demands as follows**:**

1.1 Definition of the right to freedom of opinion

In order to discuss in detail, the development of the right to express one's opinion and freedom of expression, we must refer to the idea and concept of the right in general, as follows:

First: The nature of the right:

When we provide a definition of the right, we should present the position of jurisprudence regarding the existence of the right, where this subject is disputed by two trends: one denies its existence, and the second approves it.

The first trend - denial of the existence of the truth:

Deejay denied the idea of right in general as well as natural rights on the grounds that the right to begin creation was unknown, as there was no law in these societies, and its existence could not be proven.

The right also requires inequality between the two parties that own the right and the bearer of this right, as individuals were equal in their normal lives before the advent of laws in societies [(1)].

He also denied the rights established by law for individuals in society, since the right to the law is a voluntary power of the holder of the right over another individual who bears the burden of the corresponding duty of this right, all equal and subject to the same rule of law[(2)]. Both those who benefit from it and those who abide by the duty contained therein, and in the end it was determined that there were only positive or negative legal status for individuals, and this view was met with criticism from legal scholars [(3)].

The second trend: acknowledging the existence of the right:

Despite Deeji's denial of the instinct of truth, he did not succeed in destroying it or destabilizing the recognition of its existence, so the majority of civil jurisprudence remained believers in it, and it became recognized in the jurisprudence of civil law, and they went in the definition of truth three doctrines:

The first doctrine - personal criterion [(4)]:

It was defined as a voluntary authority that proves to the person, and authorizes him to conduct a specific action, and this definition has been criticized because it suspends the emergence of the right to the person by will, in the sense that his will is significant, and therefore the person without will is like a madman deprived of rights despite the recognition of the law for him, and the guardian, trustee or deputy undertakes legal actions instead of him and not to prove rights to him, as well as confusing the essence of the right and its actions, the right exists even if its

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[(1)]Sufi Hassan Abu Talib, History of Legal and Social Systems, Formation and Development of Legal Laws, Cairo, Dar Al-Nahda Al-Arabiya, 1997, p. 198.
[(2)]Alderman (e.) and kennedy (k.) : the right to privacy vintage,books, 1995,p88.
[(3)]In presenting and criticizing this trend, see Ramadan Abu Al-Saud, Al-Waseet fi Sharh Introduction to Civil Law, Introduction to Egyptian and Lebanese Law, The General Theory of Right, University Press and Publishing, Beirut, 1985, p. 7.
[(4)]See in the presentation of this trend Abdel Fattah Abdel Baqi, The Theory of Right, second edition, Cairo, Dar Nahdet Misr, 1965, p. 7.

owner does not use it, and The will is not required when exercising the manifestations of authority over the right and that the direct obligation of some of them, the child when he plays with his toy exercises his authority over it is authorized by law despite the fact that his will does not count. [5]

The second doctrine - objective criterion

His proponents went on to define the right on the basis of its subject matter as a legitimate interest protected by law, and this definition has two elements:

Material element: It is the interest that it aims to achieve, whether material or moral.

Legal element: It consists in the protection of this right by law.

Some have criticized this definition that the legal protection of a right is an effect of its establishment rather than its existence, as well as that interest is the end of the right and not the right itself.

The Third Doctrine: Mixed Standard:

It combines the theories of will and interest and defines right as: an authority determined by law for a person under which he can perform a certain act or oblige another to perform it in order to achieve a legitimate interest, and this definition is based on two elements:

A person has authority over something and then the law has been approved by law, as a result of which he has a right to this thing, and he has a set of acts conferred on him by that authority according to the type of right [6].

2.1 Characteristics of the right to freedom of opinion

The direct and simple concept of opinion is the state of people and their attitude towards daily and future events in everything that is happening around them, and the definitions of public opinion have varied and varied due to the diversity of knowledge and experts, and the diversity of their culture and angles of view of things. But the general framework and the overall semantics pointed to a unity of general understanding away from the difference in words or the details of phrases.

It goes without saying that there is no specific definition of freedom of opinion, but we can say that there are different and scattered definitions of this right, and many jurists, writers and researchers have tried to define this right, as there are those who believe that freedom of opinion refers to the external expression of a person about his own ideas or beliefs.

As for expression, it is usually through action, speech, rhetoric, or even publishing and writing, and freedom of opinion can also be expressed in movements and images that may be drawings, without any government control, with the requirement that the expression of freedom of opinion is not one of the factors that penetrate the law and customs of the state.

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[5]Quoted in Maurice Cranston, Freedom (London: Longmans, Green Be Co., 1953, p. 13.
[6]Abdel Fattah Abdel Baqi, The Theory of Right, Cairo, New Renaissance Press, 1965, pp. 17-44.

Hence, we adopt the following definition of public opinion due to its comprehensiveness of all the vocabulary of meaning: "e and the free expression of the opinions of voters or those in their equivalents with regard to disputed public issues, whether local or international, political or other areas of life, provided that they are convinced of these views and adhere to them capable of influencing public policy and matters of public interest , The opinion of the majority and the consent of the minority shall be expressed."[(7)]

While another group went to define it as the ability of a person to form his opinion based on his personal thinking, without dependence or imitation of anyone, or fear of anyone, and to have full freedom to declare this opinion in the manner he deems appropriate.

Another definition of freedom of opinion and expression under public international law is the freedom to say what he thinks without being chased and includes the freedom to investigate, receive and impart information by any media whatsoever, without limitation of geographical frontiers and in any form, written, oral or printed and by any media of the person's choice[8].

2.Munderstanding Legislative Safeguards

The modern states without exception based on the main structure of three basic pillars in governance, namely the executive, legislative and judicial authorities, and that most countries establish the rules of these three authorities on the basis of the principle of separation of powers, but the truth and reality in the field of application of the impossibility of the complete separation of those powers no matter how much democratic countries try to adhere to this principle and their laws do not justify exceeding any authority on the competencies of the other authority, the affairs of legislation is the competence of the parliament, i.e. the legislative authority, whether this The council is on one level or there are two councils, one of which in its duties complements the other.

It should be noted that throughout human history, many eras inhabited by injustice, oppression and suppression of freedoms have rolled, and there are other eras full of democracy, justice and respect for human rights and fundamental freedoms, but the human rights movement was active and flourished greatly in the aftermath of the end of World War II and was crowned by the Universal Declaration of Human Rights, which included in its provisions the protection of freedom of opinion and expression, as well as many international and regional charters, treaties and conventions, as well as the texts of national legislation prescribed for human rights such as Iraqi legislation, whether national laws, or laws on Kurdish regions, such as the law of the Independent Public Commission for Human Rights in the Kurdistan region of Iraq, issued in

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(7) Faraj Abdul RaoF. Ammar, The Legal Regulation of the State of Emergency in Iraq: A Comparative Study, University of Babylon, Faculty of Law, Department of Public Law, 2016, p. 66.

(8) Ibid., p. 72.

2010 [9].

Iraqi law was one of the previous laws in dealing with freedom of opinion and expression, as that freedom was contained in the Iraqi constitution many decades ago, specifically since 1925, and it is the first constitution issued in Iraq, and this was called the Iraqi Basic Law issued in 1925, where this constitution indicated in its first chapter called the rights of the people in Article No. (12) of it that Iraqis have the freedom to express opinion, publish, assemble, form associations and join them within the limits of the law.

Public opinion is an expression of the collective will of citizens, when a general expression is formed by many individuals in a society towards an incident or phenomenon, this is what is called public opinion, and given the importance of public opinion, all countries, including Iraq, have worked to protect it and provide guarantees to monitor it and ensure its preservation, and given the relationship that is linked between public opinion and emergencies, in such cases, public opinion is in a state of alert or appearance significantly.

1.2 Principle of legality

With the emergence and establishment of states in the modern form, there has become an importance and even a necessity to regulate relations between citizens and the state and control those relations through rules characterized by standards governed by the principle of legality, which results in the recognition of which the actions and actions of the administration are subject to judicial control, including monitoring the legitimacy of administrative decisions, because granting the administration more freedom in order to achieve its function, especially in the decisions it issues unilaterally, which is the most important manifestation of the legal privileges that make it more dangerous than the rest of the Other authorities can thus restrict the exercise of individual rights and freedoms through binding organizational and individual decisions, as well as in cases of direct execution.

The rule of law, respect and application represent the strength of the state and the basic pillar of its existence, without which the state loses its character and is then nothing more than a human grouping, because what differentiates between the state and human groupings, and chaos is the rule of law, respect and application, every human gathering lacks this solid pillar is not correct in our view to be described as a state and if it appears from outside that it is an organized grouping.

The rule of law, in the necessary brevity, means that everyone is subject to his rule and bows before his sword, and if the convicted are often subject to the sword of law, voluntarily or involuntarily, because the legal rule is associated with the penalty for violating it, as it was the image of this sanction, the true meaning of the rule of law, for example, remains the subordination of the governing authorities to legal rules, and this is what is known in the

[9]Legislation entitled: Law of the Independent Public Commission for Human Rights in the Kurdistan Region - Iraq, Kurdistan Gazette, No. 114, Batareh, 8 February 2010

jurisprudence of public law as the principle of legality or legality[10].[11]

If the true meaning of legality lies in the subordination of the governing authorities to the letter of the law, and if these authorities are subject to breach of the law and violation of its provisions intentionally or by mistake, then the administrative judiciary shall have the best control and assistant at the same time to respect the law and its proper application. If the executive authorities respected the law and applied it well with love and dignity, and if they deviated from that, then individuals had no choice but to resort to the judiciary to restore the situation to normal.

The legitimate decision is what its five pillars have agreed with the conditions that may be contained in the laws to which the administrative authority is subject in accordance with and in line with the realization of the principle of legality, so it is not permissible to challenge acts that do not have a legal effect, such as preparatory work that precedes the issuance of the administrative decision, because they do not have an effect in themselves, but what arranges the effect is the final administrative decision, which may be challenged alone when it is issued by annulment[12].

The decision is issued by an administrative authority of its own volition: for an administrative decision to be appealed, it must be issued by an administrative authority, whether central or decentralized, since legal action in order to be an administrative decision must be issued by a public administrative person and carried out by the representative of that public legal person [13].

In all countries, the first function of public administration is to maintain public order or is known as the control authority, as this activity is the most dangerous and most important in each of the countries, because it has the power and means of coercion to impose order in society and protect rights, and administrative control in turn is concerned with maintaining public order and achieving the public interest as a guarantee to control individual activities so that they are not mixed or these individual activities are not conflicting and are carried out in a random manner, and so that there is no Harmful to the general interest of society, ensuring the stability of the general interest of society and the achievement of its supreme goals prevails over private individual interests, and under the administrative control system as a function entrusted to the administration through which it seeks to develop controls and regulatory frameworks for the

[10]Mohamed Saeed Ibrahim Mohamed El-Laithy, The Administration's Refusal to Implement Administrative Rulings: Methods - Reasons - How to Confront, PhD Thesis, Faculty of Law, Ain Shams University, 2008, p. 156.

[11]Hamad Kamal Abul-Magd, Prevention of the Elimination of Acts of Ed, Cairo, Dar Al-Nahda Al-Arabiya, 1994, p. 7.

[12]Essam Al-Sadiq Abdel-L.H., The Mechanism for Implementing Administrative Judiciary Rulings: A Comparative Study, Cairo, Dar Al-Nahda Al-Arabiya, 2019, p. 122

[13]Karim Adel Ahmed Shahawi, International Administrative Judiciary Rulings, Authenticity, Appeal and Guarantees of Implementation, PhD Thesis, Beni Suef University, Faculty of Law, 2019, p. 177.

activities of various individuals, if the interests of individuals differ, this may be in causing damage to public order and the spread of chaos.[14]

The decisions and actions of the state are issued in accordance with a specific law governing it, where we find that the role of the administrative control over the work of the administration is to monitor the respect of the administrative authorities for the law and punish their illegal powers by canceling them and deciding compensation for the affected, and then it is clear that the process of judicial control over the work of the state in general and control over the work of administrative authorities in particular is one of the most important and best guarantees and procedures for applying the principle of legality in the state, which obliges the public administration in its various sectors and units to be subject to the provisions of The law in its actions and actions, such as the issuance of administrative decisions, which are the most important activity carried out through the exercise of its powers and competencies, and may sometimes lead to a violation of the legal situation, which requires its submission to the law, and this is what is meant by the principle of legality enshrined by the State [15].

It is agreed that the status of rights and freedoms in the state is not measured by the basic principles or rules stipulated in the laws or in the constitution, as much as it is measured by the effectiveness of the judicial protection that the state wants and actually provides to it, it is taken for granted that the greater the judicial protection of the rights and freedoms of persons, the more their capabilities are liberated, because violating the law in any society is a waste of the elements of the state.

The judicial organization in most countries has settled on the existence of two types of judicial control over the work of the administration, the first type does not distinguish between individuals and the administration in monitoring their actions and subjects them to one judicial system, the ordinary judiciary, called the unified judicial system. The second is called the dual justice system. A distinction is made between individual disputes and is the competence of the ordinary judiciary and administrative disputes and is subject to a specialized judiciary, the administrative judiciary [16].

There is no doubt that the most dangerous means of administration that would prejudice the public freedoms of individuals are administrative control measures and this danger is not mitigated by the subjection of these measures to the principle of legality, although it is true that it cannot be said that there are public freedoms except in the legal state, and that these are the

[14]Mohamed Abdel Hami Dr. Masoud, Problems of Judicial Control of the Legality of Administrative Control Decisions, Cairo, Dar Al-Kutub Al-Qanoon, 2010.

[15]Salem bin Rashid Al-Alawi, Advocacy for 15the Review of Administrative Decisions, Sultanate of Oman, Sultan Qaboos Academy Publishing House, 2011, p. 142.

[16]Tarek Zreikin, The Role of the Administrative Judiciary in Monitoring the Legality of Administrative Control Decisions, Master's Thesis, Faculty of Legal and Economic Sciences, Sidi Mohamed Ben Abdallah University in Fez, 2014, p. 4.

first guarantees of public freedoms, but that is not enough to ensure these freedoms and there is no doubt as well that judicial control is the strongest guarantee of these freedoms in countries where opinion is still The General Assembly is in the process of formation, and the Legislative Council does not assume its oversight role vis-à-vis the executive authority, as this requires the existence of an independent judiciary that carries out its work in terms of protecting the freedoms of individuals and placing the administration and the individual at the same level [17].

2.2 Principle of separation of legality

The principle of separation of powers is one of the basic principles on which democratic systems are based, and it is a basic principle of the essence of democracy, in a way that is similar in importance to the principle of the sovereignty of the people and the nation, and is due to the French writer Montesquieu, where he preferred to formulate the principle of separation of powers between the three powers: legislative, executive and judicial, in the book The Spirit of Laws, which had an impact on the democratic system in France.

Just as I was also influenced by the thought of Jean-Jacques Rousseau in his book The Social Contract and to measure the importance of the principle of separation of powers, it can be said that the monarchies that prevailed in Europe until the eighteenth century in which Montesquieu lived, these monarchies were founded on the idea of absolute monarchy by concentrating the powers of executive, legislative and judicial states in the hands of one person, the king, so sovereignty was limited to the king only, although there were councils of cooperation of the king in managing the affairs of government, However, their role was simple in the sense that important decisions were taken by the will of the king alone, and this resulted in the prevalence of tyranny, injustice and aggression against the rights and freedoms of individuals, and the absence of the rule of law and legitimacy.

If democracy means that the reins of power are in the hands of the people, there are three forms of the people's exercise of that power, as the first image is direct democracy, under which the people themselves assume the authority to govern in all its manifestations without representation or representation, and the second image is representative democracy, in which the people exercise the powers of government through a representative body representing them.

The importance of the principle of separation of powers does not appear in direct democracy, because it is the people who exercise the powers of government themselves, but in the case of representative democracy, here the importance of the principle appears because it is the picture in which the need for the distribution of powers becomes clear [18].

As for the relationship between the legislative and executive authorities, jurisprudence –

[17] Fadi Naim Jamil Alawneh, The Principle of Legality in Administrative Law and the Guarantees of its Achievement, Master's Thesis, An-Najah National University, Faculty of Graduate Studies, 2011, pp. 138-143.

[18] The System of Government in the United States of America, by Larry Elowitz, translated by Gaber Said Awad, Egyptian Association for the Dissemination of Knowledge and World Culture. First edition, Cairo, 1966, p. 12.

Egyptian and comparative – divided the systems of government in different countries, according to the position of the constitution of each country on the principle of separation of powers.

In the view of this jurisprudence, the different constitutions stood different positions of the principle, some denied it completely and applied the system of integration between the authorities, which are the systems known as the government of the Assembly or the bicameral system, and others took the idea of separation of powers while achieving cooperation and balance between them, which is known as parliamentary systems, and finally some systems have applied the severe separation of powers, embracing the wrong interpretation of the principle and these systems are known as presidential systems

According to the divisions of the principle of separation of powers, each body performs a certain action, and each body cooperates with the other in order to achieve the common good, and in this way it is possible to avoid the deviation that may occur if all the functions are settled in one hand. Plato's basic idea of distributing state functions later became the cornerstone of the separation of powers.

Aristotle did not advocate the separation of powers, as Plato did, but rather the division of state functions according to their legal nature. There is no doubt that the separation of powers cannot be achieved unless there is a division of State functions and thus Aristotle's vocation contributed to the emergence and formation of the principle [(19)].

The jurist Jean-Jacques Rousseau argued that the legislative and executive powers [(20)] should be separated, because of the different nature of each, Frousseau believes that sovereignty is concentrated in the legislative branch, which represents the people, and sovereignty is exercised by the people and with their consent[(21)]. As for the executive branch, it exercises its powers in the implementation of laws and the management of public utilities under the supervision and control of the people as a delegate and subordinate to them, as it is the people who have the right to monitor and dismiss them if necessary. Its powers shall cease when the people meet in their General Assembly. We also find that Rousseau, although he distinguished between the judiciary and the executive branch, but he equated them in submission to the legislative authority, judges are subject to the laws set by the legislature, and may appeal against the rulings of the judiciary to the sovereign people who have the right to pardon the convicts.

[(22)] John Locke believed at the end of the seventeenth century that the entrenched conflict between the King and Parliament in Britain would be resolved successfully only if the executive

[(19)]Salah al-Din Fawzi, The Ocean in Political Systems and Constitutional Law, Dar Al-Nahda Al-Arabiya, 2000, p. 202.
[(20)]Muhammad al-Sinnari, Constitutional Law and the Theory of the State and Government, A Comparative Study, n.d., n.n.p., pp. 906-907
[(21)]Philippe Lauvaux, Les grandes democratie contemporaines, 1990, p. 140-141.
[(22)]Ramadan Mohamed Battikh, The General Theory of Constitutional Law and its Applications in Egypt, Dar Al-Nahda Al-Arabiya, second edition, 1998-1999, p. 255.

branch, headed by the King, was separated from the legislative power represented in the House of Parliament, so that each had its own independent powers from the other.(23) In his book, the civil government dealt with the theory of separation of powers on the basis of popular sovereignty, and the legislative authority has the most important powers, and although the executive authority is independent of them, it is subject to it, and stressed that the executive and federal or federal authorities must meet in the hands of one body to ensure its work in one direction, and despite the importance of the legislative authority, it does not need to meet continuously, as its work is limited only to the enactment of laws, and that the latter are placed at intervals

The implementation of laws, the protection of the community and the management of its public affairs require a regularly existing authority, and it is considered that man is naturally inclined to dominate and abuse his powers unless anyone monitors him. (24)(25)

It should be noted that John Locke did not recognize the judiciary as independent and distinct from other authorities, because before the revolution of 1688 judges were subject to and ordered by the royal crown, and even after being freed from submission to the crown, they were prisoners of parliament and submitted to the partisan majority controlling it(26).

There is no doubt that John Locke's theory of separation of powers is the basis on which Charles Montesquieu based his theory of this principle, and although John Locke's theory was not clear-cut, Charles Montesquieu was able to modify the elements on which John Locke's theory based his theory to create a new and well-defined theory(27).

The jurist Montesquieu studied the theories and ideas of his predecessors on the principle of separation of powers, taking advantage of his stay in England for two years and influenced by the English systems in force at that time, but he was not affected by the practical reality of the prevailing governments in his time, so he formulated these theories and ideas in a new formulation, and developed a wonderful and integrated general theory coupled with his name in his book "The Spirit of Laws" in 1748 AD, which became the basis of every organized government, and the title of every ideal state regardless of the time or place in which it is located This Government or State, and therefore he had the right in political thought to have this theory

(23)Ayman Younis Hammadi Ali Al-Alwani, The Role of Iraqi Satellite Channels in Spreading the Culture of Peaceful Coexistence in Society, A Comparative Study, Master's Thesis, Mansoura University, Faculty of Arts, 2022, p. 96.
(24)Anwar Ahmed Raslan, Rights and Freedoms in a Changing World, Dar Al-Nahda Al-Arabiya, 1997, p. 94
(25)Taima Al-Jarf, State Theory and General Principles of Political Systems and Systems of Government, A Comparative Study, Dar Al-Nahda Al-Arabiya, Fifth Edition, 1978, p. 581.
(26)Mr. Sabry, Government of the Ministry, Analytical Research on the Emergence and Development of the Parliamentary System in England, Cairo, International Press, 1953, p. 67.
(27) Ahmed Omar Mohamed Mohamed Salem, Criminal Policy in the Face of Protest, A Comparative Study, PhD Thesis, Faculty of Law, Cairo University, 2021, p. 87.

attributed to him and associated with his name[28].

Charles Montesquieu attributed the characteristics of sovereignty to three distinct authorities: the legislature, the executing authority of public law, i.e. the executive branch, and the authority implementing private law, i.e. the judiciary.[29][30]

Montesquieu portrayed this in a clear and accurate way: "Political freedom can be guaranteed only in moderate Governments, although it does not always exist in such Governments, but is achieved only when rights are abused.[31] Virtue itself needs limits, and to achieve non-abuse of power the system must be based on the premise that power limits power and laws have no value. Constitutional rules, if the powers are not in the hands of independent bodies, each of which is careful to use them for the common good and not for the personal good."[32]

The end

The state of emergency is an exceptional system that is naturally associated with the case of a danger that may affect the security of public order, the state and its entity or may threaten public safety and the security of society, and there is no doubt that the declaration of a state of emergency is a weapon in the hands of the executive authorities to confront these risks, and on the other hand, the multiple resort to the declaration of states of emergency represents a threat to human rights legislation, and therefore the expansion of powers in cases of threat to security is really necessary to protect public order, and protect However, in democratic countries, these matters must be carefully regulated so that matters are not left to the executive authority alone, which takes such serious decisions because of their important and influential impact on the freedoms and rights of individuals.

No matter how accurate the coordination and organization of emergency situations, judicial and legislative oversight must be highly effective on the work of administrations, especially under states of emergency, and it has become clear through this study that judicial oversight represents great effectiveness compared to legislative or parliamentary oversight that is subject to political

[28]Suleiman Muhammad al-Tamawi, Political Systems and Constitutional Law, A Comparative Study, Cairo, Ain Shams University Press, 1988, p. 285.
[29]Omar Helmy Fahmy, The Legislative Function of the Head of State in the Presidential and Parliamentary Systems - A Comparative Study, PhD Thesis, Ain Shams University, Dar Al-Nahda Al-Arabiya, second edition 1993, p. 3.
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influences by political blocs or political parties.

It is indisputable that facing exceptional cases and emergency circumstances requires the legislator to develop appropriate laws and measures, and therefore this matter requires addressing the laws concerned with emergencies and the shortcomings, shortages or weaknesses in the legal drafting and the contradiction between the legislative and constitutional texts, in addition to the need to analyze and discuss the limits and powers granted to the executive authorities and the guarantees necessary to protect the rights and freedoms of individuals in order to reach an accurate assessment of such Procedures.

In this study, we also dealt with an analysis of the legislative systems on the right to opinion and expression, and the legislative guarantees for them under exceptional circumstances, in light of the legal principles established by laws, whether domestic or international, related to this right, and the extent to which exceptional circumstances affect freedom of expression in all its branches of intellectual freedoms, considering that the theory of exceptional circumstances is the legal basis for the idea of exceptional legality, and through it and under which legal mechanisms were fabricated to confront cases of necessity and circumstances. Hence, we can say that freedom of opinion and expression under exceptional circumstances, rights are not only guaranteed through local legal texts, but also stipulated, guaranteed and protected through many guarantees contained in international conventions and conventions.

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