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The Constitutional Validity of the Exceptional Measures Adopted to Confront the COVID-19 Pandemic in Algeria and Their Impact on Rights, Freedoms, and the Administrative Justice Service

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Abstract

In response to the outbreak of the COVID-19 pandemic, Algeria conferred very broad administrative-police powers on the Prime Minister, enabling him to adopt exceptional measures through executive decrees in order to safeguard public health. However, under the constitutional and legal provisions in force, the Prime Minister does not have the authority to adopt exceptional measures that adversely affect citizens' rights and freedoms. Such measures fall within the powers of the President of the Republic following a declaration of a state of emergency under Article 97 of the Constitution, which provides the appropriate constitutional and legal basis for confronting the COVID-19 pandemic in view of the adverse effects of those exceptional measures on citizens' rights and freedoms and on public services, particularly the administrative justice service.

Keywords: constitutional status of exceptional measures; public health emergency; administrative police measures; impact on rights and freedoms; impact on the administrative justice service.

1. Introduction

On 11 March 2020, the World Health Organization classified the coronavirus disease (COVID-19) outbreak as pandemic threatening countries throughout the world. Most states exposed to the risk of its spread resorted to exceptional measures, including the declaration of a public health emergency, in order to confront the threat.¹ The Algerian executive authorities, however, adopted a

different approach. They confronted the pandemic through administrative-police measures without declaring a state of emergency and conferred very broad powers on the Prime Minister, who issued several executive decrees containing exceptional measures and procedures intended to address the public-health threat and preserve public health.

These exceptional measures had a direct adverse effect on citizens' fundamental rights and freedoms by restricting and narrowing their exercise to the extent deemed necessary to eliminate the threat. They also adversely affected public services, particularly the administrative justice service.

Accordingly, the research problem is formulated as follows: What is the constitutional status of the exceptional measures adopted to confront the COVID-19 pandemic? What impact did those measures have on rights and freedoms and on the administrative justice service?

This study is divided into two sections. The first is entitled "A Constitutional Assessment of Algeria's Response to the COVID-19 Pandemic," while the second examines "The Impact of Exceptional Measures on Rights and Freedoms and on the Continuity of the Administrative Justice Service."

Section One: A Constitutional Analysis of the Exceptional Measures Adopted to Confront the COVID-19 Pandemic in Algeria

Like many other states, Algeria adopted a number of exceptional measures to confront the COVID-19 pandemic without declaring the state of emergency provided for in Article 97² of the 2020 constitutional amendment currently in force.³ This raises the question why a state of emergency was not declared and administrative-police measures were deemed sufficient, notwithstanding the adverse repercussions of the adopted exceptional measures on citizens' rights and freedoms. This section therefore examines, first, the constitutionality of the administrative-police measures adopted to confront COVID-19 and, second, the proposition that the proper constitutional basis was the declaration of a public health emergency.

Subsection One: The Constitutionality of Administrative-Police Measures Adopted to Confront COVID-19

The Algerian executive branch resorted to exceptional measures adopted by executive decree to confront the pandemic and entrusted the Prime Minister with responsibility for addressing the threat. This approach treated the pandemic not as an urgent necessity requiring a declaration of a state of emergency under Article 97 of the 2020 constitutional amendment or Article 105⁴ of the 2016 constitutional amendment,⁵ but rather as an administrative matter to be handled by the executive through administrative-police measures,⁶ namely measures designed to preserve public health. This position was reflected in Executive Decree No. 20-69,⁷ concerning measures for the prevention and

control of the spread of COVID-19. In its preambular references, the decree relied on Article 99(4)⁸ of the 2016 constitutional amendment, which authorizes the Prime Minister to sign executive decrees, and Article 143(2),⁹ which confers authority to implement laws within the regulatory sphere. The question therefore arises whether the exceptional measures adopted by the Prime Minister to confront COVID-19 genuinely constituted implementation of the laws cited in the decree's legal bases.

In confronting the spread of COVID-19, the Prime Minister was empowered to adopt exceptional measures through Executive Decree No. 20-69 concerning measures for the prevention and control of the spread of COVID-19. According to the legal bases cited in the decree, it was issued in implementation of Law No. 88-07 on occupational health, safety and medicine.¹⁰ An analytical reading of that statute shows, however, that it concerns health measures for the protection of workers in the workplace and bears no direct relation to the exceptional measures adopted to confront COVID-19, which applied to all citizens without exception. Article 1 of Law No. 88-07 provides that the law is intended to determine the methods and means ensuring workers the best conditions in occupational health, safety and medicine and to designate the persons and employing institutions responsible for implementing the prescribed measures. This demonstrates that the executive decree issued by the Prime Minister, which contained exceptional measures addressed to all citizens without exception, did not correspond to the statutory text except insofar as workers were concerned. The exceptional measures contained in the Prime Minister's executive decrees therefore fell outside the scope of Law No. 88-07 on occupational health, safety and medicine.

Reliance was also placed on Law No. 18-11 of 2 July 2018 on health.¹¹ Article 1 of that law states that it lays down the fundamental provisions and principles governing citizens' rights and duties in the field of health and seeks to ensure prevention and the protection, preservation, restoration and promotion of human health with due respect for dignity, freedom, integrity and private life. Article 42¹² further provides that the prevention and control of diseases of international spread are subject to the International Health Regulations of the World Health Organization, while Article 43 states that the State is responsible for establishing sectoral and intersectoral health measures aimed at preventing and protecting citizens from diseases with an international spread.

An examination of Law No. 18-11 of 2 July 2018 on health shows that it assigns the Minister of Health responsibility for preparing national health-protection programmes, supervising them and evaluating them periodically.¹³ Local authorities, namely the wali (provincial governor) and the president of the municipal people's assembly, are charged with implementing the measures adopted by the Minister of Health.¹⁴ These powers, however, were conferred for ordinary health conditions. A public health emergency affecting the State is of a different nature. The authorities mentioned above

do not possess the same exceptional powers in such circumstances. In its second section, the Health Law refers the prevention and control of diseases of international spread to the International Health Regulations of the World Health Organization.¹⁵ This applies to COVID-19, which the World Health Organization classified on 11 March 2020 as a pandemic threatening countries worldwide. Accordingly, the Health Law does not grant the Prime Minister any power to adopt exceptional measures to preserve public health during a public health emergency. It therefore remains necessary to examine whether the International Health Regulations cited among the decree's legal bases confer such exceptional powers on the Prime Minister.

The International Health Regulations were published in Algeria by Presidential Decree No. 13-293, which promulgated the International Health Regulations adopted in Geneva on 23 May 2005.¹⁶ Under Article 1 of those Regulations, a "public health emergency of international concern" is an extraordinary event that constitutes a public-health risk to other States through the international spread of disease and potentially requires a coordinated international response. The expression "public health risk" refers to the likelihood of an event that may adversely affect the health of human populations, particularly an event that may spread internationally or pose a serious and direct danger. Article 2 defines the purpose and scope of the Regulations as preventing, protecting against, controlling and providing a public-health response to the international spread of disease in ways that are commensurate with and restricted to public-health risks. Article 3 requires implementation with full respect for human dignity, human rights and fundamental freedoms, guided by the Charter of the United Nations and the Constitution of the World Health Organization. Article 4 addresses the authorities responsible for implementation and requires States Parties to designate a National IHR Focal Point and the authorities responsible, within their jurisdictions, for implementing health measures under the Regulations.

The International Health Regulations also provide for quarantine measures of the type included in Executive Decree No. 20-69 issued by the Prime Minister. Quarantine entails restricting the activities of persons who are not ill but are suspected of infection, or restricting or separating baggage, containers, conveyances or goods suspected of contamination, in a manner intended to prevent the possible spread of infection or contamination.¹⁷

The foregoing indicates that the International Health Regulations are generally intended to prevent and control the international spread of disease. They require States Parties to take measures at borders and points of entry—ports, airports and land crossings—and regulate the treatment of travellers and baggage. Exceptional measures adopted within a State during a public health emergency remain, by contrast, within the sovereign powers of the State Party. The Regulations do not oblige a State to impose exceptional measures or quarantine on its own citizens; rather, they

require the competent authorities to adopt measures at border points and locations involving travellers and their baggage in order to prevent cross-border spread. Thus, measures contained in Executive Decree No. 20-69 and the executive decrees supplementing it—particularly quarantine and distancing—are contemplated by the International Health Regulations and are necessary to prevent widespread transmission. Nevertheless, the substance of the Regulations does not itself confer on domestic authorities broad powers to impose such exceptional measures on citizens inside the State or to restrict citizens' rights and freedoms by imposing quarantine, limiting freedom of movement and assembly, and requiring the wearing of protective masks under threat of penalties, whether fixed fines or custodial sanctions. A further constitutional concern arises from conferring such extensive powers on the Prime Minister under administrative-police authority without effective oversight by other constitutional institutions, particularly the former Constitutional Council, the current Constitutional Court, and Parliament.

In light of the foregoing, the executive decrees issued by the Prime Minister lack a clear legal basis and therefore fall outside the constitutional framework because the regulatory provisions do not correspond with the statutory provisions discussed above. This concern is heightened by the broad powers granted to the Prime Minister to adopt exceptional measures that directly and adversely affected citizens' rights and freedoms and the continuity of public services by imposing full or partial lockdowns in several provinces, restricting the movement of persons, limiting freedom of movement and freedom of meeting and assembly, and placing obstacles and restrictions on freedom of trade.

Subsection Two: The Constitutional Basis for the Exceptional Measures Adopted to Confront COVID-19 Was the Declaration of a Public Health Emergency

As explained above, the Algerian State confronted the spread of COVID-19 through administrative-police measures and granted the Prime Minister broad powers to issue executive decrees containing exceptional measures that directly affected citizens' rights and freedoms, without declaring a state of emergency even though the World Health Organization had characterized the pandemic as a public health emergency. The issue, therefore, is whether declaring a state of emergency and adopting exceptional measures within that framework would have a constitutional basis and possess legal and constitutional legitimacy.

Article 97 of the 2020 constitutional amendment provides: "Where an urgent necessity so requires, the President of the Republic shall declare a state of emergency or a state of siege for a maximum period of thirty (30) days, after convening the High Security Council and consulting the President of the Council of the Nation, the President of the People's National Assembly, the Prime Minister or Head of Government, as the case may be, and the President of the Constitutional Court.

The President shall take all necessary measures to restore the situation. A state of emergency or state of siege may not be extended except with the approval of Parliament sitting with both chambers convened together."

The Algerian Constitution does not define a state of emergency. Article 97 nevertheless establishes that, in a case of urgent necessity, the President of the Republic may declare a state of emergency for thirty days after complying with the procedures and conditions specified in the provision and may adopt all measures necessary to restore normal conditions.

A state of emergency may be defined as "a temporary exceptional situation experienced by the State, arising from an urgent necessity that constitutes a threat to the security of its citizens and to public order and requiring the competent authority to adopt exceptional measures for a defined period specifically to confront that threat. Such measures may narrow the scope of citizens' rights and freedoms by suspending or restricting them in proportion to the degree of danger, while seeking to restore the previous situation as soon as possible."¹⁸

Since the spread of COVID-19 constituted a public health emergency according to the World Health Organization, the question is whether it could be grounded in the state-of-emergency mechanism set out in Article 97 of the 2020 constitutional amendment. Put differently, did the COVID-19 pandemic amount to an urgent necessity requiring the President of the Republic to adopt exceptional measures and declare a state of emergency?

In this regard, the expression "urgent necessity" in Article 97 is concise and general; there are no legal interpretations defining its concept, limits or sources.¹⁹ Legal scholarship has therefore acknowledged the difficulty of precisely determining the concept of necessity and the element of danger it entails. Most scholarship agrees that the necessity justifying exceptional regimes must involve an unusual danger to the State, one of its constituent elements or one of its institutions, and that the danger must be so serious that it cannot be addressed through ordinary laws and regulations²⁰ and must threaten a fundamental constitutional right.²¹

A state of necessity therefore involves an unusual danger threatening the State, one of its constituent elements, one of its institutions, or a fundamental constitutional right. The question is whether the risk posed by the spread of COVID-19 constituted such an urgent necessity.

COVID-19 is a contagious and dangerous disease that threatens public health. It therefore constitutes a sudden and serious exceptional circumstance threatening public health, which is itself a fundamental constitutional right. Article 63 provides that the State shall ensure citizens' access to health care, particularly for persons in need, and shall ensure the prevention and control of infectious and epidemic diseases. On this basis, COVID-19 constituted an urgent necessity requiring

the declaration of the state of emergency provided for in Article 97 of the Constitution and the adoption by the President of the Republic of all measures necessary to restore the situation.

In light of the foregoing, the President of the Republic should, according to this analysis, have declared a state of emergency and adopted exceptional measures to confront the spread of COVID-19, particularly because it constituted an urgent and pressing necessity threatening citizens' health security. This was the approach adopted by many states.

Furthermore, confronting the spread of COVID-19 required broad exceptional measures that adversely affected citizens' rights and freedoms by restricting them to the extent considered necessary to contain the threat. Such measures included restrictions on freedom of movement to prevent transmission, the imposition of partial or full quarantine, restrictions on certain commercial activities, prohibitions on gatherings, meetings and demonstrations, and restrictions on religious freedom through the closure of mosques and other places of worship.

The foregoing exceptional measures restricting rights and freedoms were contained in the executive decrees issued by the Prime Minister. They fell outside the constitutional framework because constitutional legality required the President of the Republic to declare a public health emergency and to adopt exceptional measures within the constitutional powers conferred by Article 97, after complying with the substantive and procedural conditions laid down in that provision.

Within this framework, declaring a state of emergency in response to exceptional health circumstances such as the COVID-19 pandemic would have constituted the proper constitutional framework for dealing with the pandemic. It would have empowered the executive authority, represented by its head—the President of the Republic—to adopt exceptional measures proportionate to the risks posed by those circumstances and proportionate to the resulting restrictions on citizens' rights and freedoms, while remaining subject to constitutionally established safeguards, including review by the Constitutional Court, parliamentary oversight and judicial review.

Section Two: The Impact of Exceptional Measures on Rights and Freedoms and on the Continuity of the Administrative Justice Service

As noted above, in confronting the spread of COVID-19 the Prime Minister was granted broad powers to adopt exceptional measures and procedures affecting most sectors of the State. Those measures had a direct impact on citizens' fundamental rights and freedoms and on the continuity of public services, particularly the justice service. This section therefore examines, first, the impact of exceptional measures on rights and freedoms and, second, their impact on the continuity of the administrative justice service.

Subsection One: The Impact of Exceptional Measures on Rights and Freedoms

To confront the spread of COVID-19, the executive authority, represented by the Prime Minister, imposed exceptional measures and procedures through several executive decrees with the stated objective of eliminating the threat and protecting public health. These measures directly affected citizens' individual and collective rights and freedoms. The following discussion addresses the principal rights and freedoms affected.

First: The Impact of Exceptional Measures on Freedom of Movement

As part of the response to COVID-19, the Prime Minister issued two principal executive decrees: Executive Decree No. 20-69,²² concerning measures for the prevention and control of the spread of COVID-19, and Executive Decree No. 20-70, establishing supplementary measures for the prevention and control of the pandemic. Both decrees contained exceptional measures affecting freedom of movement. Article 3 of Executive Decree No. 20-69 suspended specified passenger-transport activities during the period referred to in Article 2, including domestic public passenger air services; road transport in all directions, whether urban, suburban, inter-municipal or inter-provincial; passenger rail transport; guided transport such as metro and tramway systems; cable transport; and collective taxi services. The Minister responsible for transport and the wali, acting within their respective competences, were authorized to organize passenger transport and preserve continuity of public service. Executive Decree No. 20-70 imposed still greater restrictions on freedom of movement. Article 1 provided for supplementary measures through quarantine regimes and movement restrictions. Home quarantine could be total or partial and required persons not to leave their homes or places of residence during periods determined by public authorities. Article 5 stated that "the movement of persons is prohibited during the quarantine period in the municipality or province concerned." Under partial quarantine, curfews were imposed across the national territory, some cities were completely isolated, and public and private means of transport—including trains, aircraft, collective transport and taxis—were suspended.²³ These exceptional restrictions were adopted because they were considered necessary to limit rapid viral transmission. Their effect, however, was to restrict freedom of movement and personal liberties. Freedom of movement is constitutionally protected by Article 49, which provides that every citizen enjoying civil and political rights may freely choose a place of residence and move freely throughout the national territory and that every citizen has the right to enter and leave the national territory. The third paragraph adds that this freedom may be restricted only for a specified period by a reasoned decision of the judicial authority. Nevertheless, the executive authority represented by the Prime Minister restricted this freedom during the pandemic and delegated related powers to civil authorities, namely the Minister of Transport and the wali, thereby adversely affecting citizens' personal rights and freedoms.

Second: Placement of Suspected Persons under Compulsory Quarantine

The exceptional measures contained in Executive Decrees Nos. 20-69 and 20-70 also restricted personal liberty by placing individuals under compulsory quarantine without an order from the competent judicial authorities. During the response to COVID-19, persons suspected of carrying the virus were placed in quarantine facilities isolated from the outside world²⁴ for periods of varying length. The authorities also adopted stricter measures by placing all citizens arriving in Algeria from foreign countries—whether through airports or other means of transport—in quarantine for fifteen days as a precaution against transmission.²⁵ This amounted to an infringement of fundamental rights, particularly because those individuals were only suspected of infection and alternative measures, such as testing capable of identifying carriers within a short period, could have been employed without imposing the same degree of interference with individual rights.

Third: The Impact of Exceptional Measures on Freedom of Assembly and Meeting

Under Article 10 of Executive Decree No. 20-70, during partial or total quarantine any gathering of more than two persons was prohibited. Civil authorities therefore prohibited gatherings and meetings regardless of their purpose and closed places in which people ordinarily assembled, including schools, universities, places of worship such as mosques and religious institutes, public parks, beaches and other recreational spaces. As the threat intensified, civil authorities adopted additional exceptional measures through a series of executive decrees.²⁶ In addition to other restrictions, these measures suspended the activities of industrial and commercial establishments, required workers to remain in quarantine during the declared period, and closed restaurants, cafés and wedding halls as well as cultural, economic, political and other events. The exceptional measures remained in force, in varying forms, for nearly two years. They therefore adversely affected freedom of assembly and meeting. These freedoms—including peaceful assembly and demonstration—are constitutionally protected under Article 52, which guarantees freedom of expression, freedom of meeting and peaceful demonstration and provides that they are exercised upon declaration. The exceptional measures adopted by the executive authority, represented by the Prime Minister, substantially restricted freedom of assembly, meeting and demonstration.²⁷

Fourth: Comprehensive Requisition of Personnel and Public and Private Facilities

In the same context, the broad powers granted to the Prime Minister in confronting COVID-19 included comprehensive requisition. Article 10 of Executive Decree No. 20-69 authorized the civil authorities, in particular the wali, to take measures for the prevention and control of the pandemic. The wali could requisition health-care staff and laboratory personnel employed by public and private health institutions; personnel of the national security services, civil protection, public-health and sanitation services; any corps involved in prevention and epidemic control; any individual whose profession or professional experience could make that person relevant to prevention and response

measures; all accommodation and hotel facilities and any other public or private facilities; all necessary means of passenger transport, public or private and regardless of their nature; and any means of transport capable of being used or equipped for medical transport. The wali could also requisition any public or private facility necessary to guarantee a minimum level of services to citizens.²⁸

The power of requisition conferred on the wali in this context is a far-reaching exceptional power that should be exercised only in extraordinary circumstances affecting the sovereignty or territory of the State, such as general mobilization or war. Comprehensive requisition of public or private property may interfere with the right to private property, a constitutionally protected right under Article 60 of the 2020 constitutional amendment, which provides that private property is guaranteed and may be expropriated only in accordance with the law and subject to fair and equitable compensation. In that sense, private property is constitutionally protected and may not be interfered with except under legally recognized exceptional conditions. Requisition—or what is sometimes termed temporary taking—is defined as “a lawful compulsory measure exercised by the competent public authority in exceptional and urgent circumstances in order to secure the needs of the country and the operation of public services, or in cases of war, civil unrest and similar circumstances; it becomes unlawful where the requisite conditions of necessity or urgency are absent.”²⁹ Algerian legislation regulates requisition or temporary taking in Articles 679 to 681 bis 3 of the Civil Code. A requisition order is issued by the wali or another legally authorized authority; it must be in writing, signed by the issuing authority, specify the duration of the requisition and provide for compensation to be determined by agreement between the parties or, where necessary, by the courts.

According to the foregoing analysis, requisition is to be used only in constitutionally recognized exceptional situations, such as a state of emergency, state of siege, exceptional state, general mobilization, aggression or war. Outside those situations, recourse to total or partial requisition may be regarded as arbitrary and as falling outside the legal and constitutional framework. In confronting COVID-19, Algeria resorted to comprehensive requisition and granted the wali extensive powers. Private hospitals and health establishments, including their material and human resources, were requisitioned, as were hotels of various types, private accommodation facilities and privately owned passenger-transport vehicles. State workers and employees, as well as public facilities and institutions, were also requisitioned for an extended period approaching two years. These measures were adopted through executive decrees issued by the Prime Minister without effective oversight safeguards from either the Constitutional Court or Parliament.

The exceptional measures adopted by the Prime Minister to confront COVID-19, including the delegation to the wali of powers of total or partial requisition, directly affected citizens’ rights and

freedoms, particularly the right to private property. Private property is among the fundamental rights and freedoms protected by the Constitution and may be restricted only by law and under constitutionally recognized exceptional circumstances. This confirms that the executive authorities should have declared one of the constitutionally established exceptional regimes, particularly a state of emergency, which would confer broad powers on the President of the Republic to adopt exceptional measures to confront the danger threatening the State and restore normal conditions under constitutional, parliamentary and judicial oversight. Alternatively, a specific statute governing a public health emergency could have been enacted to confer broad exceptional powers on the executive within a clear legal framework. It is problematic to confer such extensive powers on the Prime Minister merely through executive decrees based on ordinary administrative-police competence to implement legislation and without the oversight safeguards associated with constitutionally recognized exceptional regimes.

Subsection Two: The Impact of Exceptional Measures on the Administrative Justice Service

The broad powers granted to the Prime Minister to adopt exceptional measures against COVID-19 had a direct adverse effect on citizens' fundamental rights and freedoms by restricting them to the extent considered necessary to combat the pandemic. Their repercussions were not confined to rights and freedoms, however; they also affected the continuity of public services. Some services ceased operating altogether, while many functioned only at a minimum level. This in turn affected citizens' rights and freedoms because of the sensitivity and importance of those services. Among the services most affected was administrative justice, both in terms of continuity and in relation to procedural time limits governing administrative litigation. The following discussion therefore addresses, first, the impact of exceptional measures on the continuity of the administrative justice service and, second, their impact on procedural deadlines.

First: The Impact of Exceptional Measures on the Continuity of the Administrative Justice Service

During the COVID-19 pandemic, the Prime Minister issued several executive decrees containing exceptional measures intended to address the public-health threat. These measures directly affected the continuity and regular operation of the administrative justice service. Article 3 of Executive Decree No. 20-69 restricted freedom of movement, while Executive Decree No. 20-70 introduced partial and total quarantine measures.³⁰ Movement was almost entirely suspended through the cessation of domestic public passenger air services; road transport in urban, suburban, inter-municipal and inter-provincial directions; passenger rail transport; guided transport such as tramway and metro services; and collective taxis. These restrictions directly affected the regular functioning of the justice service, including judicial employees and court personnel, litigants—claimants and

defendants—lawyers, bailiffs, notaries, citizens seeking administrative documents from courts, and other public services interacting with the judiciary, such as the police and gendarmerie.

In addition, Article 6 of Executive Decree No. 20-69 granted exceptional paid leave to 50 per cent of the personnel of public administrations and institutions in order to reduce collective contact. This arrangement was extended more than once and remained in place for a considerable period, approximately one year, with priority granted to pregnant women, women caring for children and persons suffering from chronic illnesses. These measures further reduced the productivity and regular functioning of the justice service, despite the fact that the administration of justice is an essential and sensitive public service entrusted with safeguarding citizens' rights and freedoms.

Second: The Impact of Exceptional Measures on Judicial Procedures in Administrative Justice

Judicial procedures before the administrative courts were also affected by the exceptional measures adopted by the executive to confront COVID-19, particularly procedures relating to time limits. Compliance with procedural time limits is a formal condition for the admissibility of an administrative action. A procedural time limit may be defined as the period prescribed by law within which an administrative action must be brought in order to be admitted by the competent administrative court. Such rules protect legal positions and promote the stability of administrative relations. Their legal basis lies in Law No. 08-09 containing the Code of Civil and Administrative Procedure,³¹ as well as in specific legal provisions, particularly Articles 829 to 832 and Article 907 governing stages of administrative disputes, and Article 405 concerning the calculation of time limits.

Procedural time limits are connected with public order and therefore constitute mandatory rules that may be raised by the court of its own motion and by the parties at all stages of proceedings. Failure to comply may render an action inadmissible or extinguish the right to appeal. Article 322 of the Code of Civil and Administrative Procedure provides that failure to observe the time limits established by the Code for exercising a right of appeal results in forfeiture of that right, except in cases of force majeure or events capable of affecting the normal functioning of the justice service. An application for relief from forfeiture is submitted to the president of the court before which the dispute is pending, who decides by an order on application that is not subject to appeal, in the presence of the parties or after they have been duly summoned.

Article 69 of the Code likewise treats the requirement of time limits as a matter of public order to be raised by the judge *ex officio* as a mandatory rule. It provides that the judge must raise inadmissibility of his or her own motion where it concerns public order, particularly where the time limits for methods of appeal have not been observed or where a method of appeal is unavailable.

Accordingly, the requirement of compliance with procedural deadlines is a mandatory matter of public order because it safeguards individual rights against loss. Failure to observe such deadlines produces consequences specified in the Code of Civil and Administrative Procedure: (1) forfeiture of the right to appeal; (2) dismissal of the action on formal grounds; (3) the court's duty to raise the issue *ex officio* at every stage of proceedings; and (4) the right of all parties to invoke the issue at every stage of the litigation.

Against the background of the exceptional measures adopted by the executive to confront COVID-19, the Minister of Justice issued a memorandum to judicial bodies and penitentiary institutions³² setting out precautionary and preventive measures to be taken because of the spread of the pandemic. The memorandum addressed concerns raised by the President of the National Union of Bar Organizations regarding the effect of public-health restrictions on the exercise of rights of appeal under the Code of Civil and Administrative Procedure. It noted that the precautionary measures adopted by public authorities to confront COVID-19 undoubtedly affected the normal functioning of the justice service and called for the application of Article 322 of the Code, which grants the president of the court hearing the dispute discretion to decide applications for relief from forfeiture of the right to appeal by means of an order on application not subject to appeal, after the parties have appeared or have been duly summoned.

The memorandum issued by the Minister of Justice indicates that the COVID-19 pandemic was treated as a circumstance of force majeure in order to address the procedural gap created by exceptional measures that affected both litigants and judicial bodies.

Nevertheless, under the concept of force majeure reflected in Article 322 of the Code of Civil and Administrative Procedure, the COVID-19 pandemic does not, in itself, necessarily constitute force majeure. Rather, force majeure may arise from the incapacity or illness caused to an individual litigant, from exceptional executive measures such as restrictions on freedom of movement imposed through partial or total quarantine, and from precautionary measures adopted by the Minister of Justice in the memorandum addressed to judicial bodies and penitentiary institutions. These measures included suspension of hearings; rationalization of the use of immediate-appearance procedures by public prosecutors; limiting court presentations to persons held in police custody; temporary postponement of the execution of custodial sentences against persons who were at liberty; and suspension of public reception except in cases of extreme necessity as assessed by heads of judicial bodies. These consequences and restrictions constituted force majeure for procedural purposes.

The exceptional measures adopted by the executive authority, represented by the Prime Minister, therefore had a direct impact on the administrative justice service, both by affecting

continuity and regularity in the provision of judicial services and by affecting administrative judicial procedures. This had a direct adverse effect on the rights of litigants before the administrative courts and judicial councils.

Conclusion

In conclusion, when the COVID-19 pandemic spread, the executive authorities responded through administrative-police measures and granted the Prime Minister very broad powers under which he issued several executive decrees containing far-reaching exceptional measures. Those measures adversely affected rights and freedoms and the continuity of the administrative justice service, without a sufficiently clear legal or constitutional basis. A detailed examination of whether a state of emergency could properly have been declared during the COVID-19 pandemic indicates that recourse to that constitutional mechanism would have provided constitutional legitimacy for the exceptional response.

The study also finds that the exceptional measures adopted by the Prime Minister through executive decrees adversely affected citizens' rights and freedoms by restricting or narrowing their exercise to the extent considered necessary to contain the pandemic. Among the principal affected rights were freedom of movement, freedom of assembly and meeting, and the right to property through requisition measures. The measures also affected the administrative justice service, both in terms of the continuity and regularity of service provision and the procedural rules governing judicial time limits.

In light of the foregoing, the following recommendations are proposed:

- Declaring a state of emergency, or enacting a specific law governing a public health emergency, should provide the principal constitutional basis for confronting a pandemic such as COVID-19.
- Administrative-police measures adopted by the executive should be balanced against full respect for citizens' fundamental rights and freedoms, and restrictions should be imposed only to the extent strictly required by necessity.
- With regard to continuity of the administrative justice service, even where the COVID-19 pandemic is treated as force majeure, the protection of individual rights and freedoms requires greater reliance on modern methods of administering justice through information and communication technologies, including e-administration and remote judicial proceedings.

Endnotes

1. During the first third of 2020, more than three million people were infected and approximately 227,000 people died as a result of the novel COVID-19 virus. Infections and deaths continued

worldwide at an alarming pace, and because of the severity of the virus it was regarded as an epidemic, a pandemic and an urgent danger in almost all countries.

2. Article 97 of the 2020 constitutional amendment provides: "Where an urgent necessity so requires, the President of the Republic shall declare a state of emergency or a state of siege for a maximum period of thirty (30) days, after convening the High Security Council and consulting the President of the Council of the Nation, the President of the People's National Assembly, the Prime Minister or Head of Government, as the case may be, and the President of the Constitutional Court. The President shall take all necessary measures to restore the situation. A state of emergency or state of siege may not be extended except with the approval of Parliament sitting with both chambers convened together."

3. Presidential Decree No. 20-442 of 30 December 2020 promulgating the constitutional amendment approved by referendum on 1 November 2020, Official Gazette No. 82 of 30 December 2020.

4. Article 105 provides: "Where an urgent necessity so requires, the President of the Republic shall declare a state of emergency or a state of siege for a specified period, after convening the High Security Council and consulting the President of the Council of the Nation, the President of the People's National Assembly, the Prime Minister and the President of the Constitutional Council. The President shall take all measures necessary to restore the situation. A state of emergency or state of siege may not be extended except with the approval of Parliament sitting with both chambers convened together."

5. Official Gazette No. 76 of 8 December 1996, containing the text of the 1996 Algerian Constitution as amended by Law No. 16-01 of 6 March 2016, Official Gazette No. 14 of 7 March 2016.

6. Mustapha Bounedjar, "Confronting the Coronavirus Pandemic: Between Declaring a State of Emergency and Relying on Administrative-Police Measures," *Al-Ijtihad Journal for Legal and Economic Studies*, Vol. 9, No. 4, 2020, p. 108.

7. Executive Decree No. 20-69 of 21 March 2020 concerning measures for the prevention and control of the spread of the coronavirus (COVID-19), Official Gazette No. 15 of 21 March 2020, p. 6.

8. See Article 99 of the 2016 constitutional amendment.

9. See Article 143 of the 2016 constitutional amendment.

10. Law No. 88-07 of 26 January 1988 on occupational health, safety and medicine, Official Gazette No. 4 of 27 January 1988.

11. Law No. 18-11 of 2 July 2018 on health, Official Gazette No. 46 of 29 July 2018.

12. Article 42 of Law No. 18-11 on health provides: "The prevention and control of diseases of international spread shall be subject to the International Health Regulations of the World Health Organization."

13. See Article 31 of the Health Law.

14. See Article 35 of the Health Law.

15. See Article 42 of the Health Law.

16. Presidential Decree No. 13-293 of 4 August 2013 promulgating the International Health Regulations (2005), adopted in Geneva on 23 May 2005, Official Gazette No. 43 of 28 August 2013.

17. See Article 1 of the International Health Regulations.

18. Ismail Boulkouane, *The Transformation of the Concept of Exceptional Regimes*, Doctoral Thesis in Public Law, University of Algiers, Faculty of Law, Said Hamdine, 2021 academic year, p. 33.

19. S. Ghaouti and B. Etien, "La légalité d'exception dans la Constitution Algérienne du 22 Novembre 1976," *R.A.S.J.E.P.*, No. 4, Algiers, 1978, pp. 707–710.

20. Wagdi ThabetGhabrial, *The Exceptional Powers of the President of the Republic under Article 74 of the Egyptian Constitution and Judicial Review Thereof*, Monsha'at al-Ma'arif, Alexandria, 1988, p. 37.

21. Ashraf Al-Lamsawi, *The Impact of Exceptional Circumstances, the State of Necessity and Exceptional Laws on the Principle of Legality in Different Legal Systems*, National Center for Legal Publications, 1st ed., 2008, p. 41.

22. Executive Decree No. 20-69 of 21 March 2020 concerning measures for the prevention and control of the spread of the coronavirus (COVID-19), Official Gazette No. 15 of 21 March 2020, p. 6.

23. Article 3 of Executive Decree No. 20-69 provides for the suspension, during the period specified in Article 2, of domestic public passenger air services; road transport in all directions, including urban, suburban, inter-municipal and inter-provincial services; passenger rail transport; guided transport including metro, tramway and cable transport; and collective taxi services.

24. During the spread of COVID-19 in Algeria, the authorities designated specific accommodation for persons suspected of carrying the virus in order to prevent transmission. These facilities included hotels of various categories, public health institutions and designated isolation centres. The persons concerned were also subjected to degrading treatment and strict conditions during quarantine.

25. Article 1 of Executive Decree No. 20-69 provides that the decree is intended to establish social-distancing measures aimed at preventing and combating the spread of COVID-19 and that

those measures are intended, on an exceptional basis, to reduce physical contact among citizens in public spaces and workplaces.

26. Executive Decree No. 20-69 of 21 March 2020 and Executive Decree No. 20-70 of 24 March 2020 concerning measures for the prevention and control of COVID-19; Executive Decree No. 20-86 of 2 April 2020 extending the provisions concerning those measures; Executive Decree No. 20-127 of 20 May 2020, published in Official Gazette No. 30 of 21 May 2020, extending the relevant provisions; and Executive Decree No. 20-131 of 28 May 2020 further extending the provisions concerning measures for the prevention and control of COVID-19.

27. The spread of COVID-19 produced numerous adverse economic effects in most countries, including job losses, raising issues concerning economic and social rights such as the right to work and access to unemployment benefits pending new employment. Many countries began compensating individuals who lost their jobs. Quarantine measures clearly affected this category of human rights and other rights. In this regard, Kenneth Roth, then Executive Director of Human Rights Watch, stated that governments should avoid sweeping and excessively broad restrictions on movement and personal liberty, rely where possible on voluntary social distancing, and impose mandatory restrictions only where justified, necessary and scientifically grounded.

28. See Article 10 of Executive Decree No. 20-69 concerning measures for the prevention and control of the spread of COVID-19.

29. Hussein Nawara, "Legal Protection of Foreign Investor Property in Algeria," *Critical Legal Journal*, Faculty of Law, Mouloud Mammeri University of TiziOuzou, No. 1, 2009, p. 60.

30. Executive Decree No. 20-70 of 24 March 2020 establishing measures for the prevention and control of the spread of COVID-19, Official Gazette No. 16 of 24 March 2020.

31. Law No. 08-09 of 25 February 2008 containing the Code of Civil and Administrative Procedure, Official Gazette No. 21 of 2008.

32. Ministerial Memorandum No. 007/W.A.H.A/20 concerning efforts to apply Article 322 of the Code of Civil and Administrative Procedure.