
BEYOND LINGUISTIC EQUIVALENCE: LEGAL TRANSLATION AND CONCEPTUAL COMPARABILITY OF CONSTITUTIONAL EMERGENCY REGIMES

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Abstract: This article examines the conditions under which terms associated with constitutional emergency regimes may be treated as genuinely comparable across different legal systems. Its purpose is to test the widespread assumption that terminological correspondence provides sufficient evidence of legal and conceptual equivalence and to determine the level of inference that can legitimately be drawn from a translated legal term. The study combines legal translation, conceptual analysis, and comparative constitutional analysis within a qualitative comparative design covering Bosnia and Herzegovina, Montenegro, North Macedonia, Albania, Italy, and Spain. The comparison is operationalized through each regime's normative basis, substantive activation thresholds, competent authorities, duration, redistribution of powers, restrictions on fundamental rights, and mechanisms of parliamentary and judicial oversight. The results demonstrate that similar terminology may conceal materially different constitutional arrangements, while functionally comparable mechanisms may operate under different legal designations. On this basis, the article develops and applies a three-level framework that distinguishes descriptive, functional, and conceptual-systemic equivalence. Descriptive equivalence concerns terminological correspondence; functional equivalence requires comparable institutional effects; and conceptual-systemic equivalence requires similarity in the position occupied by the relevant institution within the constitutional order as a whole. The six cases also show that exceptional legal effects may exist without a single general constitutional category of emergency and that several differentiated regimes may coexist within one constitutional system. The comparative evidence further indicates that the validity of cross-system comparison depends on preserving distinctions among legal designation, institutional competence, constitutional function, and mechanisms of control. The article concludes that legal translation should be treated as a methodologically relevant stage of comparative legal analysis rather than as a preliminary linguistic operation. The proposed framework aims to reduce both false-positive comparisons based on similar labels and false-negative comparisons caused by different terminology. Comparative studies of emergency regimes should test translated terms against their legal sources, institutional functions, effects on rights, and oversight structures before drawing broader conclusions about constitutional equivalence.

Keywords: legal translation; emergency regimes; comparative constitutional law; conceptual comparability; legal equivalence

1. INTRODUCTION

War, terrorism, epidemics, natural disasters, severe disruptions of public order, and economic crises may generate demands for action outside ordinary institutional arrangements, but an event's seriousness does not itself determine its legal status. A threat must be politically named, legally classified, activated through a competent institution, and delimited by procedural and control mechanisms. The transition from naming to institutional effect is therefore the central object of analysis.

Comparative research is especially difficult when similar words designate different legal constructions or different words designate functionally comparable mechanisms. Emergency, crisis, state of emergency, state of war, exception, necessity, estado de alarma, and related terms do not form a homogeneous legal category. Legal translation must therefore be treated as a relation between legal systems rather than merely between linguistic signs (Cao, 2007; Jopek-Bosiacka, 2013; Peruzzo, 2022; Kusik, 2025). Contemporary studies likewise show substantial variation in the legal effects, duration, rights limitations, and oversight of emergency powers (Bjørnskov & Voigt, 2022; Grogan, 2022; Horváth, 2025).

The research question is: under what conditions can terms associated with emergency regimes in different constitutional systems be regarded as genuinely comparable? The article contributes by treating conceptual comparability as a testable problem, connecting legal translation with constitutional function, and proposing explicit thresholds for descriptive, functional, and conceptual-systemic equivalence. The central claim is that translational similarity, institutional effect, and systemic constitutional position are distinct claims and should not be conflated.

2. THEORETICAL FRAMEWORK

EXCEPTION, SOVEREIGNTY, AND CONSTITUTIONAL REGULATION

The theory of the exception links emergency power to the boundary between norm and decision. Schmitt (2005) emphasizes sovereignty and decision, while Agamben (2005) problematizes the stabilization of temporary exception. Comparative constitutional analysis, however, requires testing these theoretical categories against legal sources, activation procedures, temporal limits, and control mechanisms. Emergency powers differ across institutional models, and their legality depends not only on formal authorization but also on how constitutional constraints and oversight operate (Ferejohn & Pasquino, 2004; Bjørnskov & Voigt, 2022; Sente, 2025).

Securitization theory explains how phenomena are represented as existential threats that may justify action beyond ordinary procedures (Buzan et al., 1998; Wæver, 1995). Securitization and legal exception are nevertheless distinct: political urgency passes through an institutional filter consisting of constitutional hierarchy, parliamentary control, judicial review, proportionality, and temporal limits. Pandemic governance showed that urgent political claims can translate into very different legal instruments and institutional effects (Grogan, 2022).

Comparative law and legal translation share the problem of system-bound concepts. Legal interpretation is context-dependent: linguistic elements acquire meaning through relations extending beyond isolated forms (Zdravkovska-Adamova, 2017), while legal terminology derives meaning from its normative and institutional environment (Cao, 2007; Jopek-Bosiacka, 2013; Peruzzo, 2022). Recent work therefore emphasizes comparative legal methods, terminological consistency, and the systemic conditions of equivalence (Prieto Ramos & Cerutti, 2023; Kusić, 2025). This article extends that approach to constitutional emergency regimes.

3. ANALYTICAL FRAMEWORK

Three levels are distinguished. Descriptive equivalence concerns terminological correspondence; functional equivalence concerns comparable activation conditions, powers, duration, and oversight; conceptual-systemic equivalence requires similarity in the institution's position within the constitutional order, including its relation to rights and ordinary procedures. These levels are successive thresholds of inference rather than a quantitative scale: failure at a higher threshold does not invalidate a lower level of comparability but limits the conclusion that may legitimately be drawn.

Table 1. Operationalization of comparative equivalence

Dimension	Core question	Indicators
Linguistic-descriptive	How is the concept designated and translated?	official designation; semantic field; translation variants
Legal	Is it a formal legal category?	constitutional/statutory source; activation conditions; duration
Institutional-functional	Who activates the regime and which powers are conferred?	competence; redistribution of powers; oversight; termination
Political-contextual	How is the regime legitimized and interpreted?	threat discourse; securitization; historical experience; public reception
Conceptual-systemic	Does the concept perform a comparable role within the constitutional order?	constitutional position; relation to rights and ordinary procedures

Source: Authors' own conceptualization.

4. METHODOLOGY AND CASE SELECTION

A qualitative comparative design integrates conceptual, comparative constitutional, and political-historical analysis, following the context-sensitive logic of qualitative inquiry (Dzogovic & Bajrami, 2023). The unit of analysis is not the state as such but the relationship between terminology, legal qualification, and institutional effect. For each case, the analysis considers the official term, normative source, activation threshold, decision-making authority, duration, effects on executive and legislative power, restrictions of rights, oversight, and the concept's position within the constitutional order.

The six cases were selected theoretically to maximize variation in constitutional construction. Bosnia and Herzegovina combines historical experience of exceptionality with the absence of a single general state-level emergency regime; Montenegro and North Macedonia permit examination of linguistic proximity and differentiation by threat type; Albania has a multiple constitutional taxonomy; Italy illustrates necessity-and-urgency mechanisms without a single overarching constitutional category; and Spain provides a graduated architecture of formally differentiated regimes.

The primary corpus consists of official constitutional texts and relevant legislation. Coding follows predefined categories: designation, legal basis, activation threshold, competent authority, duration, power redistribution, rights restrictions, and parliamentary or judicial oversight. In Bosnia and Herzegovina, the state framework is distinguished from entity-level mechanisms. The study does not attempt an exhaustive reconstruction of case

The diagram illustrates a 7-step process of democratic consolidation, represented as a network of interconnected nodes. The steps are numbered 1 through 7, with some steps having associated external nodes. The connections are as follows:

- Step 1: Threat identification** is connected to **Step 2: Political classification** and **Public sphere**.
- Step 2: Political classification** is connected to **Step 1: Threat identification** and **Step 3: Legal qualification**.
- Step 3: Legal qualification** is connected to **Step 2: Political classification** and **Constitution / law**.
- Step 4: Regime activation** is connected to **Step 3: Legal qualification**, **Executive**, and **Step 5: Power redistribution**.
- Step 5: Power redistribution** is connected to **Step 4: Regime activation**, **Parliament**, and **Fundamental rights**.
- Step 6: Control / oversight** is connected to **Step 5: Power redistribution**, **Parliament**, and **Step 7: Normalization / termination**.
- Step 7: Normalization / termination** is connected to **Step 6: Control / oversight** and **Courts**.
- Public sphere** is connected to **Step 1: Threat identification**.
- Executive** is connected to **Step 4: Regime activation**.
- Parliament** is connected to **Step 5: Power redistribution** and **Step 6: Control / oversight**.
- Fundamental rights** is connected to **Step 5: Power redistribution**.
- Courts** is connected to **Step 7: Normalization / termination**.

Additional labels include "constraint / correction" between **Step 6: Control / oversight** and **Step 7: Normalization / termination**, and "Public sphere" above **Step 1: Threat identification**.

Note: The network represents analytical sites of institutional intervention; connections do not imply a fixed chronological sequence.

Bosnia and Herzegovina. The state Constitution contains no single general state-level emergency clause, while entity constitutions provide functionally distinct mechanisms. The Federation Government may adopt decrees with the force of law when the country is endangered and Parliament cannot act, while Republika Srpska provides special mechanisms when the National Assembly cannot be convened. The system is therefore better understood as a multilevel constitutional order without a single state-level codification rather than as an order without exceptional effects (Constitution of Bosnia and Herzegovina, 1995; Constitution of the Federation of Bosnia and Herzegovina, Art. IV.B.9; Constitution of Republika Srpska, Art. 81).

North Macedonia. Articles 54 and 124-126 separately regulate war, emergency, and rights limitations. A state of emergency is linked to major natural disasters or epidemics, normally requires a two-thirds Assembly decision, and initially lasts up to 30 days; the President may act when the Assembly cannot convene, subject to confirmation. Terminological differentiation directly encodes information about threat, authority, duration, and rights (Constitution of the Republic of North Macedonia, Arts. 54, 124–126).

Italy. Article 77 permits provisional measures having the force of law in extraordinary cases of necessity and urgency, but the Constitution does not activate a single overarching state of emergency. Immediate parliamentary submission is required and the measure loses effect unless converted into law within 60 days. Italy thus demonstrates functional exception without necessary terminological equivalence (Constitution of the Italian Republic, Art. 77; Corradetti & Pollicino, 2021).

Comparative result. The six models form a configurational rather than linear pattern. Bosnia and Herzegovina and Italy show that exceptional effects may exist without a single generic category; Montenegro, North Macedonia, and Albania connect differentiated threats to differentiated legal regimes; Spain provides the clearest graduated model. Functional equivalence must therefore be established through legal effects, while conceptual-systemic equivalence depends on the institution's position within the constitutional order as a whole.

Table 2. Standardized matrix of comparative criteria and conceptual outcomes

Case	Regime / activation	Authority & control	Conceptual outcome
Bosnia and Herzegovina	Multilevel; no single state-level threshold	Entity institutions; level-dependent parliamentary and Convention-based constraints	No single codification ≠ no exceptional effects
Montenegro	War / emergency differentiated by threat type	Parliament; Council for Defense and Security if Parliament cannot sit; subsequent confirmation	Linguistic proximity does not entail legal equivalence
North Macedonia	War / emergency; two-thirds decision; emergency up to 30 days	Assembly; President if Assembly cannot convene; rights limits	Threshold, powers, and rights are encoded in the designation
Albania	War / emergency / natural disaster	Regime-specific authorities; proportionality and differentiated rights limits	Constitutional taxonomy functions as a limit on exceptionality
Italy	Necessity and urgency; no single overarching regime	Government decree-law; parliamentary conversion within 60 days	Functional exception without terminological identity
Spain	Alarma / excepción / sitio; graduated thresholds	Government and Congress in different combinations	Generic translation conceals graduated constitutional functions

Source: Authors' comparative elaboration based on the primary legal sources analyzed in the study.

6. FROM DESCRIPTIVE TO FUNCTIONAL AND CONCEPTUAL-SYSTEMIC EQUIVALENCE

The distinction among the three thresholds corrects two recurrent comparative errors. False positives arise when institutions are treated as identical because they bear similar names; false negatives arise when functionally comparable mechanisms are overlooked because they use different names. Italy and Spain illustrate opposite sides of this problem: the former produces exceptional effects without a single generic constitutional designation, whereas the latter contains several formal designations within a differentiated architecture. The model therefore identifies not only the closest translation but also the level of comparative inference that the evidence can support.

7. DISCUSSION

The findings challenge the use of emergency as a universal comparative container. Such terminology is convenient in English-language scholarship but may flatten constitutionally decisive distinctions. Recent comparative work confirms substantial variation in crisis-management techniques and emphasizes that formal emergency powers do not by themselves determine lawful exercise (Bjørnskov & Voigt, 2022; Horváth, 2025; Szente, 2025). De jure architecture, de facto practice, and conceptual equivalence must therefore remain analytically distinct.

The pandemic reinforces this point because emergency governance appeared through formally declared regimes, special legislation, necessity-based decrees, and measures located within ordinary constitutional frameworks. Functional analysis therefore provides a stronger basis for comparative inference than classification by designation alone (Grogan, 2022; Corradetti & Pollicino, 2021). The same logic applies to legal translation: where a term is system-bound, methodological reliability requires that institutionally relevant differences remain visible (Peruzzo, 2022; Prieto Ramos & Cerutti, 2023; Kusić, 2025).

The distinction also has rule-of-law implications. Legal certainty, proportionality, temporal limits, and effective parliamentary and judicial oversight depend on clarity concerning the category activated and the powers conferred. Precise classification is therefore not merely linguistic but part of constitutional control. The study is limited by its theoretically selected six-case design, non-exhaustive treatment of implementing legislation and case law, and analytical rather than quantitative use of the political-contextual dimension. Future research should test the model against judicial decisions, parliamentary debates, and concrete episodes of crisis governance.

8. CONCLUSION

Comparative analysis of emergency regimes should begin with the function a term performs within its own legal and political order rather than with its nearest translation. Across the six models, a crisis is not automatically a legal exception, urgency is not synonymous with a state of emergency, exceptional powers may exist without a single formal regime, and several differentiated forms of exception may coexist within one constitutional order. The article's methodological contribution is a three-level test: descriptive equivalence establishes terminological correspondence, functional equivalence tests institutional effects, and conceptual-systemic equivalence assesses constitutional position. This reduces the risk of classifying distinct constructions under a common label because of linguistic similarity and the opposite risk of overlooking comparable mechanisms because different names are used. Future research should test these thresholds across additional jurisdictions and concrete episodes of emergency governance.

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