



## Case 001-11-EE

Corte Constitucional Case No. 001-11-EE, July 27, 2011.

**Country:** Ecuador

**Region:** Americas

**Year:** 2011

**Court:** Constitutional Court [Corte Constitucional]

**Health Topics:** Disasters and emergencies, Health care and health services, Hospitals

**Human Rights:** Right to health

### Facts

This case was a decision on the constitutionality of an executive decree extending the declaration of a state of emergency in respect of the national public health services. Articles 165 and 166 of the Constitution and Articles 120 and 121 of the Organic Law of Jurisdictional Guarantees and Constitutional Controls set forth conditions that a declaration of a state of emergency must meet, including the civil rights that may be limited thereby. This was the first and only judicial instance.

### Decision and Reasoning

Ecuador-CC 2011-0001-11-EE-dic was a decision by the Constitutional Court on the constitutionality of an executive decree extending for 30 days the state of emergency imposed on all operative units of the Ministry of Health, with a list of hospitals in particular, in order to avoid a collapse in services and for the Ministry of Health to be able to implement emergency capacity-building measures. The issue was that this would imply the continued suspension of some services, and by extension, the public's right to access them. Article 165 of the Constitution enumerated the specific rights that may be limited or suspended through emergency measures; the right to healthcare was not included. The Court considered however that the decree would not limit or suspend any rights, as it was simply ordering a national mobilization, and therefore it was not in violation of Art. 165, and held that the decree met the requirements of necessity, proportionality, legality, temporality, territoriality and reasonability, and was therefore constitutional.

### Decision Excerpts

“The principles of proportionality and reasonability are established by the connection between:

The constitutional conditions relative to the only rights that may be suspended or limited, which are, the right to the inviolability of one's domicile, the inviolability of one's correspondence, the freedom of movement, the freedom to associate and assemble, and the freedom of information; in the case of a declaration of a state of emergency . . . .”

“In sum, the renewal of the state of health emergency and the measures set forth by Executive Decree No. 693, dated March 11, 2011, are found to be in conformity with the constitutional principles of proportionality and reasonableness, as established by the second paragraph of article 164 of the Constitution, given that they have complied with the constitutional conditions set forth in article 165 of the Constitution (they have neither suspended nor limited rights, but instead have ordered a national mobilization) and in the first paragraph of article 166 of the Constitution (the National Assembly and the Constitutional Court were duly notified, and no international body was notified, given that no rights are to be limited or suspended as a result of the decree); with the procedural and substantive requirements of constitutional control of such a declaration, as set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control . . . .”