



Case 0002-09-SEE-CC, Case 0002-09-EE

Corte Constitucional para el Período de Transición, Sentence No. 0002-09-SEE-CC, Case No. 0002-09-EE, May 5, 2009

Country: Ecuador

Region: Americas

Year: 2009

Court: Constitutional Court [Corte Constitucional para el Período de Transición]

Health Topics: Infectious diseases, Public safety

Human Rights: Freedom of association, Freedom of movement and residence

Facts

This decision addressed the power of the Ecuadorian executive to curtail the rights to freedom of movement, meeting and association by issuing a state of emergency aimed at preventing an outbreak of the swine flu virus, defined as a global threat by the World Health Organization.

The Constitutional President of the Republic of Ecuador, Mr. Econ. Rafael Correa Delgado, sent the notice of the Declaration of the State of Emergency in the entire national territory (Executive Decree No. 1693) to the Constitutional Court for its review.

Decision and Reasoning

The Court held that in order to determine the constitutionality, or lack thereof, of a declaration of a state of emergency, it had to review three fundamental legal issues: 1) the legal nature and purpose of state of emergency; 2) matters regarding the fulfillment of procedural requirements established by Art. 166 of the constitution of Ecuador (the Constitution) and Art. 33 of the Rules of Procedure for the Exercise of the Powers of the Constitutional Court for the Period of Transition; and, 3) fulfillment of the substantive requirements established by Art. 166 of the Constitution and 34 of the Rules of Procedure for the Exercise of the Powers of the Constitutional Court for the Period of Transition.

As to the first question, the Court held that both in international law as well as internal law, a state of emergency implies a suspension of the exercise of certain rights, but does not imply that such power be unlimited. The Court noted that the Inter-American Court of Human Rights, in its Consultative Opinion no. OC-8-87 indicated that States have the right and the duty to ensure their own security, and thus, the only purpose of the declaration of the state of emergency, is the respect for rights, the defense of democracy and the State institutions. The Court reasoned that this requirement was fulfilled because the declaration of a state of emergency sought to achieve the institutional normalcy of the State in times of crisis, either preventing or mitigating the threats to the very existence of organized society as a whole and the citizens that comprise it.

As to the second question, the Court held that Executive Decree 1693 satisfied the procedural requirements established by Art. 33 of the Rules of Procedure for the Exercise of the Powers of the Constitutional Court for the Period of Transition.

Regarding the third issue, the Court accepted the facts presented by the Executive as true, namely that the swine flu epidemic had been declared a public health alert by the World Health Organization, which had categorized it as a stage 4/6 emergency. The Court identified this epidemic as a disturbance that threatened the stability of institutions, the security of the State or the peaceful cohabitation of persons and confirmed that ordinary means were not sufficient to return institutional normalcy. It highlighted that, where this disease were allowed to spread, it would overwhelm the public health institutions. The Court reasoned that exceptional measures were strictly necessary and that there was a direct relationship between the facts giving rise to the declaration and the extraordinary measures proposed to overcome the crises. Finally, the Court confirmed that the exceptional measures were reasonable and proportional regarding the curtailment of certain fundamental rights to combat the crisis.

Decision Excerpts

“the State has a duty to prevent the expansion of the epidemic (General Com. 14 U.N.) that threatens the population in a serious manner.”

“the declaration of a State of emergency has, as its purpose, achieving the institutional normalcy of the State in times of crisis, either preventing or mitigating the threats to the very existence of organized society as a whole and the citizens that comprise it, conceived in their individual nature.”

“Both in international law as well as internal law, the State of emergency implies the suspension of the exercise of certain rights, without this entailing that this power is unlimited. In this regard, the Inter-American Court of Human Rights, in its Consultative Opinion no. OC-8-87 indicates that States have the right and the duty to ensure their own security, and thus, the only purpose of the declaration of the state of emergency, is the respect for rights, the defense of democracy and the State institutions.”

“As the decree has been succinctly examined, certain procedural and substantive causes and reasons are found for its issuance, we consider that the declaration of the state of emergency is relevant and necessary, and it primarily prevents an outbreak of swine flu in Ecuador, safeguarding the general and individual wellbeing and, primarily, the rights to health and life of citizens”

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