

[LOGO] CONSTITUTIONAL
COURT

[TRANSLATION]

Quito, Metropolitan District, July 27, 2011

DECISION No. 006-11-DEE-CC

CASE No. 0004-11-EE

Presiding Constitutional Judge: Dr. Ruth SeniPinoargote

I. BACKGROUND

Rafael Correa Delgado, Constitutional President of the Republic, acting under article 166 of the Constitution of the Republic, through official letter No. T.5701-SNJ-11-818, dated June 10, 2011, notified the President of the Constitutional Court of Executive Decree No. 795, dated June 10, 2011, which renews the state of a health emergency for all operative units of the Ministry of Health throughout the Republic, and in particular, for the following hospitals: Francisco Icaza Bustamante and Abel Gilbert Pontón, in Guayaquil; Verdi CevallosBalda, in Portoviejo; Delfina Torres de Concha, in Esmeraldas; Alfredo Noboa Montenegro, in Guaranda; José María Velasco Ibarra de Tena, in the city of Puyo; TeófiloDávila, in Machala; Eugenio Espejo, Baca Ortiz and Pablo Arturo Suárez, in Quito; in order to avoid a collapse in services and proceed with the Ministry of Public Health's implementation of the following emergency measures: 1. Intervention in respect of infrastructure and equipment; 2. Administrative and organizational intervention; 3. Intervention in respect of technical health issues; 4. Acquisition and dispensation of medicines and medical supplies; 5. Cross-cutting support procedures; given that due to the increase in demand for health and medical services, the Ministry of Health's response capacity is in danger of being overwhelmed, which could result in a serious civil disturbance.

The General Secretary of the Constitutional Court for the transition period received the President of the Republic's notification on June 13, 2011, at 10:34 a.m.

Dr. María Augusta DuránMera, General Secretary (e), hereby certifies that the present action No. 004-11-EE is related to Case No. 0001-11-EE currently in process.

II. THE DECREE IN RESPECT OF WHICH THE CONSTITUTIONAL COURT WILL RULE

“No. 795

Rafael Correa Delgado

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC:

WHEREAS:

“Article 32 of the Constitution sets forth that health is a right guaranteed by the State, the exercise of which is linked to the exercise of other rights, among these the rights to water, to food, to education, to physical culture, to social security, to healthy environments, and other rights that the State guarantees, which promote well-being.

Article 361 of the Constitution sets forth that the State will govern the system through the national health authority, and shall be responsible for the formulation of a national health policy, and shall standardize, regulate and control all health-related activities, as well as the operation of entities within the health sector;

The second paragraph of Article 362 of the Constitution establishes that state public health services shall be universal and free of charge at all levels of attention and shall include the necessary diagnostic, treatment and rehabilitation procedures, as well as medicine;

Numeral 3 of Article 363 of the Constitution sets forth that the State shall be responsible for strengthening state health services, incorporating human resources and providing physical infrastructure and equipment to public health institutions;

Numeral 11 of Article 6 of the Organic Health Law sets forth that it is the responsibility of the Ministry of Public Health: to establish health alert zones, to identify population groups at serious risk and to request the declaration of a state of health emergency, in response to epidemics, disasters or other events that put public health at serious risk;

Paragraph d) of Article 9 of the Organic Health Law establishes that it is the State’s duty to guarantee the right to health of its citizens, adopting the necessary measures in order to guarantee, in case of a health emergency, access and availability of necessary supplies and medicines in order to confront such emergency, making use of the mechanisms set forth in international agreements and treaties and applicable legislation;

After the Constitution of the Republic was promulgated, on October 20, 2008, the National Government has complied progressively with the guarantee of access to health and to medicine. Its efforts have been widely accepted by the public, which has crowded to the operative units of the Ministry of Health in order to take advantage of this much-desired right, which was so often violated due to the indolent nature of the previous

system that prioritized money over human beings, and which has resulted in the saturation of available services;

The causes that motivated the issuance of Executive Decree No. 734 of April 11, 2011, continue to exist, according to the Minister of Health, who, by way of official letter 9402, dated June 6, 2011, requested the renewal of the declaration of a state of health emergency for all national health departments;

In exercise of the powers conferred by articles 164 et seq. of the Constitution of the Republic; and articles 29 and 36 et seq. of the Public Security Law of the State;

IT IS HEREBY DECREED:

Article 1.- *Renew the State of Health Emergency for all operative units of the Ministry of Health, throughout the Republic, and in particular, for the following hospitals: Francisco Icaza Bustamante and Abel Gilbert Pontón, in Guayaquil; Verdi Cevallos Balda, in Portoviejo; Delfina Torres de Concha, in Esmeraldas; Alfredo Noboa Montenegro, in Guaranda; José María Velasco Ibarra de Tena, in the city of Puyo; Teófilo Dávila, in Machala; Eugenio Espejo, Baca Ortiz and Pablo Arturo Suárez, in Quito; in order to avoid a collapse in services and proceed with the Ministry of Public Health's implementation of the following emergency measures: 1. Intervention in respect of infrastructure and equipment; 2. Administrative and organizational intervention; 3. Intervention in respect of technical health issues; 4. Acquisition and dispensation of medicines and medical supplies; 5. Cross-cutting support procedures; given that due to the increase in demand for health and medical services, the Ministry of Health's response capacity is in danger of being overwhelmed, which could result in a serious civil disturbance.*

Article 2.- *Renew the declaration of national mobilization, especially for all personnel within the operative units and headquarters of the Ministry of Health, such as: doctors, orthodontists, gynecologists, psychologists, chemical pharmacists, health technicians, nurses, nurses' assistants and administrators, including administrative and support staff;*

Article 3.- *The duration of this renewal of the State Emergency shall be thirty days as of the date of execution of this executive decree. This decree is applicable to the territory of the Republic in its entirety.*

Article 4.- *The Ministry of Finance shall provide the necessary resources in order to attend to the emergency.*

Article 5.- *The National Assembly and the Constitutional Court shall be notified of this renewal of the declaration of emergency.*

Article 6.- The Ministers of Public Health and Finance are hereby charged with the execution of this Executive Decree, which shall enter into force upon its execution, without prejudice to its publication in the Official Register.

At the National Palace, in Quito, Metropolitan District, today, June 9, 2011.

Rafael Correa Delgado
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC".

III. CONSIDERATIONS AND RATIONALE OF THE CONSTITUTIONAL COURT

The Court's Jurisdiction

The full Constitutional Court for the transition period is competent to hear and resolve the present case, in accordance with the provisions of articles 166, 429 and 436, numeral 8, of the Constitution of the Republic of Ecuador, published in the Official Register No. 449 on October 20, 2008, and articles 199 through 125, in accordance with article 73 of the Rules of Procedure for Proceedings before the Constitutional Court.

Determination of the legal issues to be analyzed

In order to establish the constitutionality of the state of emergency, it is necessary to review three fundamental legal issues: 1) those relative to the legal nature and purpose of the state of emergency; 2) compliance with the formal requirements established by articles 166 of the Constitution and 120 of the Organic Law of Jurisdictional Guarantees and Constitutional Control; and, 3) compliance with the material requirements set forth in article 121 of the Organic Law of Jurisdictional Guarantees and Constitutional Control.

The legal nature and purpose of the declaration of a state of emergency

As the Constitutional Court has already stated, the state of emergency is a normative-constitutional mechanism or control that democratic states may use to control anomalous situations that are the result of state activity, or in order to prevent or mitigate the effects of a natural disaster. In this respect, citizens may continue to carry on their activities without any violation of their fundamental rights, which cannot be protected by the normal legal-institutional mechanisms set forth in the Constitution and in the law.

Both at international and domestic law, the state of emergency presupposes the suspension of the exercise of certain rights; although this does not mean that this prerogative is unlimited. In this regard, the Inter American Court of Human Rights, in its Advisory Opinion OC-8-87, indicates that states have the right and the obligation to guarantee their own security, and therefore the objective of the state of emergency is to respect citizens' rights, and to defend democracy and State institutions.¹

¹ Inter American Court of Human Rights, Advisory Opinion OC-8-87, "Habeas Corpus under the suspension of guarantees". 1987, paragraph 20.

In fact, article 165 of the Constitution of the Republic sets forth that: “*During the state of emergency, the President of the Republic may only suspend or limit the exercise of the rights 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, under the terms set forth by the Constitution.*”

In this respect, beyond the mention of or the failure to mention those rights the exercise of which would be limited by the declaration of a state of emergency, the only rights that may be limited are those referred to in the preceding paragraph. This is supported by the fact that a large part of the relevant doctrine, as well as the judicial-constitutional agreements of Western democracies, establishes that the only rights that may be limited by the declaration of a state of emergency, are essentially those referred to above.

It should be noted that the declaration of a state of emergency does not provide *carte blanche* for the indiscriminate suspension of rights, but only contemplates the possibility of the limitation of certain civil rights, in which event, such limitation must be based on the facts of the specific situation.

In this context, the purpose of the declaration of a state of emergency is to reestablish the institutional normalcy of the State in times of crisis, or the peace of mind of its citizens in times of natural disaster, avoiding or mitigating any threats to the very existence of organized society as a whole, and of the citizens who make it up, as individuals.

Formal analysis of Executive Decree No. 795, of June 9, 2011

As we have indicated, article 166 of the Constitution of the Republic sets forth that the President shall notify the Constitutional Court and the National Assembly of the declaration of a state of emergency, and send both bodies the text of the decree in respect thereof, within 48 hours following such decree’s issuance, for the purposes of constitutional control. In the present case, this is Decree No. 795, which orders the following: “*Renew the state of a health emergency for all operative units of the Ministry of Health throughout the Republic, and in particular, for the following hospitals: Francisco Icaza Bustamante and Abel Gilbert Pontón, in Guayaquil; Verdi Cevallos Balda, in Portoviejo; Delfina Torres de Concha, in Esmeraldas; Alfredo Noboa Montenegro, in Guaranda; José María Velasco Ibarra de Tena, in the city of Puyo; Teófilo Dávila, in Machala; Eugenio Espejo, Baca Ortiz and Pablo Arturo Suárez, in Quito; in order to avoid a collapse in services and proceed with the Ministry of Public Health’s implementation of the following emergency measures: 1. Intervention in respect of infrastructure and equipment; 2. Administrative and organizational intervention; 3. Intervention in respect of technical health issues; 4. Acquisition and dispensation of medicines and medical supplies; 5. Cross-cutting support procedures; given that due to the increase in demand for health and medical services, the Ministry of Health’s response capacity is in danger of being overwhelmed, which could result in a serious civil disturbance.*” The decree complies with this requirement, as Decree 795 was issued on

Thursday, June 9, and the relevant parties were notified on Monday, June 13, 2011—that is, within the established time period.

In addition, it must be determined if the decree that is the subject of the review for constitutional control is in accordance with articles 164 of the Constitution of the Republic and 120 of the Organic Law of Jurisdictional Guarantees and Constitutional Controls, both in respect of the reasons motivating the issuance of the decree, as well as the formal requirements that the declaration of a state of emergency must contain. Therefore, the following analysis is in order:

Authority authorized to declare a state of emergency

In accordance with Constitutional standards, the President of the Republic shall issue any decree of a state of emergency. In fact, from the review of the text of Decree No. 795, of June 9, 2011, it is clear that the decree was issued by the President of the Republic, and therefore, the decree complies with this formality.

Identification of the facts

The President of the Republic identifies the facts of the situation in the following manner: *“Article 32 of the Constitution sets forth that health is a right guaranteed by the State, the exercise of which is linked to the exercise of other rights, among these the rights to water, to food, to education, to physical culture, to social security, to healthy environments, and other rights that the State guarantees, which promote well-being.*

Article 361 of the Constitution sets forth that the State will govern the system through the national health authority, and shall be responsible for the formulation of a national health policy, and shall standardize, regulate and control all health-related activities, as well as the operation of entities within the health sector;

The second paragraph of Article 362 of the Constitution establishes that state public health services shall be universal and free of charge at all levels of attention and shall include the necessary diagnostic, treatment and rehabilitation procedures, as well as medicine;

Numeral 3 of Article 363 of the Constitution sets forth that the State shall be responsible for strengthening state health services, incorporating human resources and providing physical infrastructure and equipment to public health institutions;

Numeral 11 of Article 6 of the Organic Health Law sets forth that it is the responsibility of the Ministry of Public Health: to establish health alert zones, to identify population groups at serious risk and to request the declaration of a state of health emergency, in response to epidemics, disasters or other events that put public health at serious risk;

Paragraph d) of Article 9 of the Organic Health Law establishes that it is the State’s duty to guarantee the right to health of its citizens, adopting the necessary measures in order

to guarantee, in case of a health emergency, access and availability of necessary supplies and medicines in order to confront such emergency, making use of the mechanisms set forth in international agreements and treaties and applicable legislation;

After the Constitution of the Republic was promulgated, on October 20, 2008, the National Government has complied progressively with the guarantee of access to health and to medicine. Its efforts have been widely accepted by the public, which has crowded to the operative units of the Ministry of Health in order to take advantage of this much-desired right, which was so often violated due to the indolent nature of the previous system that prioritized money over human beings, and which has resulted in the saturation of available services;

The causes that motivated the issuance of Executive Decree No. 734 of April 11, 2011, continue to exist, according to the Minister of Health, who, by way of official letter 9402, dated June 6, 2011, requested the renewal of the declaration of a state of health emergency for all national health departments (...);”. Such identification of the facts and circumstances fully supports the renewal² of the declaration, and therefore, complies with the requirements set forth in article 120, numeral 1, of the Organic Law of Jurisdictional Guarantees and Constitutional Control.

Justification of the declaration

It is evident that the President of the Republic’s justification for the declaration of a state of emergency is based on the Minister of Health’s official letter 9402, dated June 6, 2011, which indicates that: *“The causes that motivated the issuance of Executive Decree No. 734 of April 11, 2011, continue to exist (...),”* and therefore the Minister requests *“(...) the renewal of the declaration of a state of health emergency for all national health departments.”* This justification also complies with the power authorized by article 164 of the Constitution.

Territory to which the state of emergency applies

Article 164 of the Constitution of the Republic establishes that the declaration may extend to the entirety of the national territory or to any part of it.

From our analysis of the Decree, and in particular article 3 thereof, it is clear that:

“(...) The decree is applicable to the territory of the Republic in its entirety.” Therefore, the territorial scope of application of the state of emergency is in conformance with the constitutional standard in question.

Duration

²TN: The text uses the word “revocación” (revocation), but from the context it is likely that this is a typographical error, and the word “renovación” (renewal) was meant to be included in its place.

Article 3 also states that: *“The duration of this renewal of the State Emergency shall be thirty days as of the date of execution of this executive decree.”* That is, the decree is in accordance with the provisions of the second paragraph of article 166 of the Constitution, which states that: *“The declaration of a state of emergency shall be in force for up to a maximum period of sixty days. If the grounds for the decree persist, it can be renewed for up to thirty additional days (...).”*

Measures to be applied during a state of emergency

While the state of emergency is ongoing, the decree states that the following measures are to be applied: *“Renew the state of a health emergency for all operative units of the Ministry of Health throughout the Republic, and in particular, for the following hospitals: Francisco Icaza Bustamante and Abel Gilbert Pontón, in Guayaquil; Verdi Cevallos Balda, in Portoviejo; Delfina Torres de Concha, in Esmeraldas; Alfredo Noboa Montenegro, in Guaranda; José María Velasco Ibarra de Tena, in the city of Puyo; Teófilo Dávila, in Machala; Eugenio Espejo, Baca Ortiz and Pablo Arturo Suárez, in Quito; in order to avoid a collapse in services and proceed with the Ministry of Public Health’s implementation of the following emergency measures: 1. Intervention in respect of infrastructure and equipment; 2. Administrative and organizational intervention; 3. Intervention in respect of technical health issues; 4. Acquisition and dispensation of medicines and medical supplies; 5. Cross-cutting support procedures; given that due to the increase in demand for health and medical services, the Ministry of Health’s response capacity is in danger of being overwhelmed, which could result in a serious civil disturbance.”*

Determination of rights that may be suspended or limited

Article 165 of the Constitution of the Republic sets forth those rights the exercise of which the President of the Republic may suspend or limit. However, the decree that is the subject of this analysis does not set forth any rights that may be suspended or limited, which may well be in response to the nature of the crisis, which the government anticipates it will overcome solely through the measures adopted, particularly given that it is within the President’s discretion whether to implement such measures. Therefore, Decree No. 795 complies with the constitutional standard in question, in accordance with numeral 4 of article 120 of the Organic Law of Jurisdictional Guarantees and Constitutional Control.

Notification of the declaration of a state of emergency

In accordance with article 166 of the Constitution of the Republic, the President of the Republic is required to notify the National Assembly, the Constitutional Court and the corresponding international bodies of the declaration of a state of emergency within forty-eight hours of the execution of the relevant instrument. And in fact, as per official letter No. T.5701-SNJ-11-818, dated June 10, 2011, the decree in question was filed with and received by the Secretary of the Constitutional Court on Monday, June 13, 2011, at

11:58 am., and therefore, within the period required by the constitutional provision in question.

Material control of Executive Decree No. 795, of June 9, 2011

In order to determine the material constitutionality of the state of emergency, it is necessary to undertake an analysis under article 121 of the Organic Law of Jurisdictional Guarantees and Constitutional Control. Therefore, the following analysis is in order:

The facts justifying the declaration have actually occurred

The National Assembly, through a resolution dated February 21, 2011, published in Official Register No. 400, on March 10, 2011, exhorted President of the Republic Rafael Correa Delgado to include all national health departments in an Original Declaration of a State of Health Emergency, in order to attend the system's urgent needs in respect of infrastructure, equipment, specialized and administrative personnel, and medicine and other supplies, in order to guarantee their adequate functioning, and in this way, to guarantee the right to health of Ecuadorian residents. The President of the Republic responded to this plea through the decree in question; however, all indications are that the state of emergency continues to exist. In this respect, the Minister of Health, through official letter 9402, dated June 6, 2011, aware that the causes that had given rise to the declaration of a health emergency persisted and that the country's public health services were in danger of collapse, requested that the President of the Republic renew the state of emergency in respect of all national health departments. The President acquiesced by way of the issuance of Decree No. 795, dated June 9, 2011, that is the subject of this analysis.

The facts giving rise to the declaration constitute an act of aggression, an armed internal or international conflict, serious civil disturbance, public calamity or natural disaster

In the present case, the facts giving rise to the state of health emergency that constitute a serious public disturbance are manifest in the face of the threat of collapse of public health services. Therefore, the extraordinary measure is fully justified.

The situation giving rise to the declaration may not be overcome through the application of ordinary constitutional measures

The imminent threat of the collapse of public health services cannot be resolved through ordinary legal means, but require extraordinary measures, such as the so-called state of health emergency. That is, the Constitution of the Republic authorizes the President of the Republic to put all state resources into motion with their full strength in order to prevent, mitigate and remediate the consequences of the health emergency.

Decree of the declaration within the temporal and territorial limitations set forth by the Constitution of the Republic

In accordance with the second paragraph of article 166 of the Constitution of the Republic, a state of emergency may be declared for a maximum of sixty days, and may be renewed for up to thirty additional days, if the causes that led to the state of emergency persist. In the present case, in light of the fact that the causes that gave rise to the original declaration are ongoing, and in respect of the constitutional provision in question, Executive Decree No. 795, dated June 9, 2011, orders the renewal of the state of health emergency for thirty additional days. Therefore, the decree is in keeping with the temporal and territorial limitations that the constitutional provision in question sets forth.

Conclusion

In summary, the facts that gave rise to the current state of emergency and the exceptional measures adopted by way of this declaration in six articles, have observed the principles of necessity, proportionality, legality, timeliness, territoriality and reasonability. Such measures are necessary in order to deal with the facts that give rise to the renewal of the declaration, they do not affect the essential nucleus of constitutional rights, nor do they interrupt the normal functioning of the State. Therefore, the measures are in accordance with the constitutional parameters required for the declaration of a state of emergency.

IV. DECISION

In light of the foregoing, in service of the administration of justice and by the authority vested in it by the Constitution of the Republic of Ecuador, the Constitutional Court for the transition period issues the following:

SENTENCE

1. Declaring the procedural and substantive soundness of Executive Decree No. 795, dated June 9, 2011, which declares the renewal of the state of health emergency for an additional thirty days.
2. Declaring the constitutionality of the renewal of the state of health emergency issued by the President of the Republic of Ecuador, economist Rafael Correa Delgado, contained in Executive Decree No. 795, dated June 9, 2011.
3. So notified, so published, so ordered.

[ILLEGIBLE SIGNATURE]

Dr. Patricio PazmiñoFreire

PRESIDENT

[ILLEGIBLE SIGNATURE]

Dr. Marcia Ramos Benalcázar

GENERAL SECRETARY

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Confirmation: I hereby confirm that the preceding Decision was approved by the all members of the Constitutional Court for the transition period, with the seven votes of the following judges: Roberto Bhrunis Lemarie, Patricio Herrera Betancourt, Alfonso Luz Yunes, Hernando Morales Vinuesa, Ruth Seni Pinoargote, Nina Pacari Vega and Patricio Pazmiño Freire, judges Manuel Viteri Olvera and Edgar Zárate Zárate not being present, in the court's extraordinary session of Wednesday, August 17, 2011. I hereby certify.

[ILLEGIBLE SIGNATURE]

Dr. Marcia Ramos Benalcázar

GENERAL SECRETARY

MRB/ccp/msb

[TWO SETS OF ILLEGIBLE INITIALS]

[LOGO] CONSTITUTIONAL
COURT

Case No. 0004-11-EE

Confirmation: I hereby confirm that the preceding Decision was signed by Dr. Patricio PazmiñoFreire, President of the Constitutional Court, on Wednesday, August 17, 2011.- I hereby certify.

[ILLEGIBLE SIGNATURE]
Dr. Marcia Ramos Benalcázar
GENERAL SECRETARY

MRB/msb [ILLEGIBLE INITIALS]