

[TRANSLATION]

Quito, Metropolitan District, July 27, 2011

DECISION No. 005-11-DEE-CC

CASE No. 0001-11-EE

Presiding Constitutional Judge: Dr. Patricio Herrera Betancourt

THE CONSTITUTIONAL COURT

For the transition period

I. BACKGROUND

Economist Rafael Correa Delgado, Constitutional President of the Republic, through Executive Decree No. 618, dated January 10, 2011, published in Official Register No. 362, on January 13, 2011, made the decision to: “Declare a State of Health Emergency for all operative units of the Ministry of Health throughout the Republic, and in particular, for the following hospitals: Eugenio Espejo and Baca Ortiz in Quito; 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; and José María Velasco Ibarra de Tena.”

The full Constitutional Court issued Decision No. 0003-11-DEE-CC on March 3, 2011, in respect of Case No. 0001-11-EE, determining that: “The procedural and substantial constitutionality of the declaration of a state of health emergency contained in Executive Decree No. 618, dated January 10, 2011, published in Official Register No. 362, on January 13, 2011, is hereby declared.”

Economist Rafael Correa Delgado, Constitutional President of the Republic, through Executive Decree No. 693, effective as of its issuance on March 11, 2011, made the decision to: “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; and Eugenio Espejo, Baca Ortiz and Pablo Arturo Suárez, in Quito.”

The Constitutional President of the Republic, through official letter No. T.5701-SNJ-11-818, dated June 10, 2011, and received the same day at 3:58 p.m., notified the President of the

Constitutional Court of the renewal of the declaration of a state of health emergency for all operative units of the Ministry of Health throughout the Republic.

In its ordinary session on March 17, 2011, the full Court acknowledged receipt of the notification of the renovation of the state of health emergency. The General Secretary of the Constitutional Court for the transition period sent official letter No. 1063-CC-SG-2011, dated March 18, 2011, to the Constitutional President of the Republic in respect of this matter, which letter was received on March 21, 2011, at 2:50 p.m.

The aforementioned Executive Decree No. 693, dated March 11, 2011, was published in Official Register No. 411, on March 23, 2011.

The General Secretary of the Constitutional Court, through official letter No. 1173-CC-SG-2011, dated March 24, 2011, remitted the matter to Dr. Patricio Herrera Betancourt (presiding judge in Case No. 0001-11-EE in respect of Executive Decree No. 618, dated January 10, 2011, published in Official Register No. 362, on January 13, 2011).

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

“No. 693

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

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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. 618 on January 10, 2011, continue to exist, according to the Minister of Health, who, by way of official letter 2942, dated February 28, 2011, requested the renewal of the declaration of a state of health emergency for all national health departments;

In addition to the hospitals referred to in Executive Decree No. 618, dated January 10, 2011, it is necessary to include the hospital in the city of Puyo; Teófilo Dávila Hospital, in Machala; and Pablo Arturo Suárez Hospital, in Quito; and

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 San Francisco de Quito, Metropolitan District, today, March 11, 2011.

SIGNED.) Rafael Correa Delgado, Constitucional President of the Republic.

Electronically signed document.”

III. CONSIDERATIONS AND RATIONALE OF THE CONSTITUTIONAL COURT

FIRST.-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 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.

SECOND.-As noted in Decision No. 0003-11-DEE-CC, dated March 3, 2011, in respect of Case No. 0001-11-EE, relate to Executive Decree No. 618, dated January 10, 2011, published in Official Register No. 362 on January 13, 2011 (Declaration of Original State of Health Emergency), and in respect of the interrelation between the constitutional conditions set forth in articles 164 to 166 of the Constitution of the Republic of Ecuador and the legal requirements set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control, the following was established:

“...From this it can be concluded that the declaration of a state of emergency is subject to constitutional conditions as an exercised power of the President of the Republic in response to expressly enumerated causes (aggression, an armed internal or international conflict, serious civil disturbance, public calamity or natural disaster) oriented by principles (necessity, proportionality, legality, temporality, territoriality and reasonability) with a certain content (the expressly enumerated rights that may be suspended or limited, measures to be adopted), which is implemented within the scope of its application (territorial and temporal), and requires formal compliance with requirements of notifications (for purposes of an eventual and justified

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revocation by the National Assembly, for constitutional control by the Constitutional Court, and to make international bodies aware thereof as appropriate); as well as legal requirements that the Court must verify (automatic procedural and substantive constitutional control of the state of emergency and the measures adopted in response to the state of emergency), in order to guarantee a constitutional state of rights and justice (the full exercise of constitutional rights and the democratic principle of checks and balances on public powers..." (emphasis added).

By making the connection between the constitutional principles that provide the framework for the state of emergency, and the legal requirements of procedural and substantive constitutional control, the requirements can be systematized within the principles, and even more so when dealing with the renovation of a declaration of a state of emergency (in respect of which there are has already been a preceding declaration of the original state of emergency, which will also have been examined for constitutionality), in the following manner:

The principles of necessity and legality are established by the connection between:

The constitutional conditions relative to: the expressly enumerated causes for which the state of emergency may be decreed, specifically: aggression, an armed internal or international conflict, serious civil disturbance, public calamity or natural disaster, and the explanation of the decree as to the cause and its motives (article 164, first and second paragraphs, of the Constitution of the Republic).

The requirements of procedural constitutional control in respect of the declaration of a state of emergency set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control require:

The identification of the facts and the constitutional cause that justify the declaration (article 120, numerals 1 and 2).

The actual occurrence of the facts giving rise to the declaration of the state of emergency, and that the facts cited in the declaration conform to one of the constitutional causes expressly enumerated (article 121, numerals 1 and 2).

The state of emergency must be declared by decree, and must fall within the substantive jurisdiction of the state of emergency (article 122, numerals 1 and 2).

The direct and immediate causal relationship of the facts that give rise to the declaration (article 123, numeral 3).

The constitutional principles of necessity and legality, set forth in the first part of the second paragraph of article 164, of the Constitution, require compliance with the constitutional conditions set forth in the second part of the first paragraph, and the second part of the second paragraph, of article 164 of the Constitution; the requirements of procedural and substantive constitutional control in respect of the declaration of a state of emergency set forth in article 120, numerals 1 and 2, and article 121, numerals 1 and 2, of the Organic Law of Jurisdictional Guarantees and Constitutional Control, and the requirements of procedural and substantive

constitutional control in respect of the measures adopted during the state of emergency, as set forth in the first part of numeral 1, and the first part of numeral 2, of article 122, and numeral 3 of article 123, id.

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 through the exercise of the powers of the President of the Republic in the terms set forth by the Constitution of the Republic; the President of the Republic's notification to the National Assembly, the Constitutional Court and to the relevant international bodies (article 165 and the first paragraph of article 166 of the Constitution of the Republic).

The requirements of procedural constitutional control in respect of the declaration of a state of emergency set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control require:

The identification of the rights that may be limited, as the case may be, and the corresponding notifications in accordance with the Constitution and international agreements (article 120, numerals 4 and 5).

It may not be possible to deal with the situation giving rise to the declaration through ordinary constitutional measures (article 121, numeral 3).

The measures adopted must be ordered in keeping with the formalities of the legal system (article 122, numeral 1).

The measures must be strictly necessary in order to deal with the facts giving rise to the declaration; they must be strictly proportional to the facts giving rise to the declaration; they must be appropriate to deal with the facts giving rise to the declaration; there must be no other measure that would create a lesser impact on rights and guarantees; the measures must not affect the essential nucleus of constitutional rights; and the measures must not alter the normal functioning of the State (article 123, numerals 1 to 7).

The constitutional principles of proportionality and reasonableness set forth in the second paragraph of article 164 of the Constitution of the Republic require compliance with the constitutional conditions set forth in article 165 and the first paragraph of article 166 id.; the requirements of procedural and substantive constitutional control in respect of the declaration of the state of emergency set forth in articles 120, numerals 4 and 5, and 121, numeral 3, of the Organic Law of Jurisdictional Guarantees and Constitutional Control; and the procedural and substantive requirements of constitutional control in respect of the measures adopted in respect of the state of emergency, as set forth in articles 122, numeral 1, and 123, numerals 1, 2, 4, 5, 6 and 7 id.

The principles of territoriality and temporality are established by the connection between:

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The constitutional conditions relative to the state of emergency may cover the entire national territory or any part thereof (first paragraph of article 164 of the Constitution); the state of emergency must be ordered for a maximum period of 60 days; the state of emergency may be renewed in the case that the causes that gave rise to it are persisting, for 30 additional days, and end when the causes giving rise to the declaration of a state of emergency have subsided (second and third paragraphs of article 166 of the Constitution).

The requirements of procedural constitutional control in respect of the declaration of a state of emergency set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control require:

The identification of the territorial and temporal scope of the declaration (article 120, numeral 3).

The declaration must be decreed within the temporal and territorial limits established by the Constitution (article 121, numeral 4).

The decree must be within the territorial and temporal jurisdiction of the state of emergency (article 122, numeral 2).

The decree must not interrupt the normal functioning of the State (article 123, numeral 7).

The constitutional principles of territoriality and temporality set forth in the second paragraph of article 164 of the Constitution of the Republic require compliance with the constitutional conditions set forth in article 166 of the Constitution; the requirements of procedural and substantive constitutional control in respect of the declaration of the state of emergency set forth in articles 120, numerals 3 and 5, and 121, numeral 4, of the Organic Law of Jurisdictional Guarantees and Constitutional Control; and the procedural and substantive requirements of constitutional control in respect of the measures adopted in respect of the state of emergency, as set forth in articles 122, numeral 2, and 123, numeral 7, *id.*

The principles of necessity and legality are established by the connection between:

Executive Decree No. 618, dated January 10, 2011, published in Official Register No. 362, on January 13, 2011 (declaring the original state of health emergency), was largely motivated by the serious civil disturbance could be caused by the collapse of public health services.

Executive Decree No. 636, dated January 27, 2011, published in Official Register No. 380, on February 8, 2011, provided that: "The National Secretary of Risk Management shall be charged with the undertaking of cross-cutting actions required by the state of emergency declared by Executive Decree No. 618, of January 10, 2011."

The Resolution of the National Assembly dated February 21, 2010, published in Official Register No. 400 on March 10, 2001, established that: "The Constitutional President of the Republic, Economist Rafael Correa Delgado, will hereby be requested to include within article 1 of

Executive Decree No. 618, dated January 10, 2011, which declares a State of Health Emergency, that the emergency include all national operative health units, in order to attend to the urgent needs of infrastructure, equipment, and specialized and administrative personnel, and to provide medicine and other medical supplies necessary for the system's adequate functioning, and in this way to guarantee the right to health of the residents of Ecuador."

Official letter No. 2942, dated February 28, 2011, from the Minister of Health, which "requests the renewal of the declaration of a health emergency for all national operative health units" (eighth "whereas" clause of Executive Decree No. 693, dated March 11, 2011).

Executive Decree No. 693, dated March 11, 2011, published in Official Register No. 411. On March 23, 2011 (renewal of the declaration of a state of health emergency) indicates in the eighth "whereas" clause: "That the causes that gave rise to the issuance of Executive Decree No. 618, of January 10, 2011, are continuing"; and for this reason, article 1 orders the: "Renewal of the state of health emergency...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."

It is clear that the renewal of the declaration of a health emergency (under Executive Decree No. 693, dated March 11, 2011) was issued because the causes that gave rise to the original declaration of a health emergency (Executive Decree No. 618, dated January 10, 2011) were continuing, as determined by the President of the Republic, with the participation of the National Secretary of Risk Management (Executive Decree No. 636, dated January 27, 2011). The National Assembly therefore requested the renewal of the declaration of the health emergency (Resolution of February 21, 2011) and the Minister of Public Health expressly requested such renovation (Official Letter No. 2942, dated February 28, 2011). Such authorities have acted according to their competencies as granted to them by law (principle of legality) and in light of the continuing needs of the public health sector (principle of necessity).

Executive Decree No. 693, dated March 11, 2011, in its ninth "whereas" clause, indicates that it is "necessary to intervene" in the public health services sector. For this reason, article 1 decrees the renewal of the state of health emergency, in order to "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." For these purposes, article 3 orders that "The Ministry of Finance shall provide the necessary resources in order to attend to the emergency." And finally, article 6 orders that, "the Ministers of Public Health and Finance are hereby charged with the execution of this Executive Decree."

It is clear that the renewal of the state of health emergency (Executive Decree No. 693, dated March 11, 2011) gives continuity to the application of the measures adopted in respect of the original declaration of a state of health emergency (Executive Decree No. 618, dated January 10, 2011), understood to be emergency measures that the Ministry of Public Health needed to continue implementing as the competent public authority in the public health sector, with due financing as appropriate by the Ministry of Finance, the public authority with jurisdiction over the budget (principle of legality). These measures were in respect of a administrative-technical intervention, directly related to and necessary in order to attend to the renewal of the national

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state of health emergency (principle of necessity), keeping in mind that the National Secretary of Risk Management would undertake cross-cutting support actions (according to Executive Decree No. 636, dated January 27, 2011).

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 necessity and legality, as established by the first part of the second paragraph of article 164 of the Constitution, given that they have complied with the constitutional conditions set forth in the second part of the first paragraph (in respect of the express cause of a serious civil disturbance), and the second part of the second paragraph (motivated by a serious domestic disturbance) of article 164 of the Constitution; 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, in article 120, numeral 1 (identification of the facts and cause); article 120, numeral 2 (justification); article 121, numeral 1 (actual occurrence of the facts giving rise to the declaration); article 121 numeral 2 (the facts give rise to the cause of a serious domestic disturbance); as well as with the procedural and substantive constitutional control requirements in respect of the measures adopted as set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control, in article 122, first part of numeral 1 (ordered by decree); article 122, first part of numeral 2 (fall within the substantive jurisdiction of the state of emergency); and article 123, numeral 3 (causal relationship of the facts with an emergency situation).

Principles of proportionality and reasonability

Article 2 of Executive Decree No. 618, dated January 10, 2011 (declaring the original state of health emergency), ordered the declaration of the national mobilization of administrative and medical personnel of the Ministry of Public Health, and article 5 ordered that the National Assembly and the Constitutional Court be notified of the declaration. No international body was notified (given that as indicated in Decision No. 0003-11-DEE-CC of March 3, 2011, given that there was no effect or impact due to the suspension or limitation of any rights, no international notification was necessary).

Article 2 of Executive Decree No. 693, dated March 11, 2011 (renewal of the declaration of a state of health emergency), orders the: "Renewal of 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 5 orders that, "The National Assembly and the Constitutional Court shall be notified of this renewal of the declaration of emergency."

It is clear, then, that the renewal of the declaration of a health emergency does not change the extraordinary measures ordered by the original declaration of a health emergency. That is, the national mobilization of administrative and medical personnel of the Ministry of Public Health is to continue, as set forth in article 165, numeral 8, of the Constitution of the Republic, as one of the measures that the president of the republic may order during a state of emergency. This

mobilization will not limit any right or guarantee provided by the Constitution or by international human rights instruments. According to the second paragraph of article 36 of the Law of State and Public Security, national mobilization is specifically to be adopted when the ordinary constitutional framework is insufficient to deal with an emergency situation, and provides that: “the transition of the ordinary activities of the State to those of a crisis, conflict, or any other national emergency” implies “an imposed order in the provision of individual services,” without affecting the essential right of the freedom to work, given that article 66, numeral 17, of the Constitution establishes precisely that forced labor is not to be imposed “except on cases as determined by the law.” This however does not imply an impact in terms of rights and guarantees, given that only a national mobilization has been ordered, and no other measures have been ordered, such as labor requisitions.

The Court notes that the extraordinary measures (the national mobilization of administrative and medical personnel of the Ministry of Public Health) and the emergency actions (the administrative-technical intervention) are appropriate, necessary, proportional and reasonable in order to attend to the emergency situation; that such situation could not have been dealt with through ordinary constitutional measures; that the measures seek to solve a constitutionally valid purpose, which is to guarantee the public’s access to health services and medicine, without affecting the normal operations of the public health sector; the measure will not impact or affect the essential nucleus of rights, but will instead prioritize permanent and urgent attention to the public due to the increase in demand for health services. No notification is required to international bodies, given that such notification is only required in the case that there is a suspension or limitation that affects or impacts essential rights.

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, in article 120, numeral 4 (no rights are limited); article 120, numeral 5 (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); article 121, numeral 3 (the national mobilization implies the transition from ordinary to extraordinary activities); as well as with the procedural and substantive constitutional control requirements in respect of the measures adopted as set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control, in article 122, numeral 1 (the exceptional measures and emergency actions were ordered by decree, in accordance with the procedural requirements established by law); and article 123, numerals 1, 2, 4, 5, 6 and 7 (the national mobilization and emergency measures ordered due to the insufficiency of ordinary measures are necessary, proportional, appropriate, and do not have an impact on or affect the essential nucleus of rights, nor alter the normal functioning of the State).

Principles of territoriality and temporality

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Article 2 of Executive Decree No. 618, dated January 10, 2011 (declaring the original state of health emergency), ordered the “Declaration of a State of Health Emergency for all operative units of the Ministry of Health throughout the Republic, and in particular, for the following hospitals: Eugenio Espejo and Baca Ortiz in Quito; 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; and José María Velasco Ibarra de Tena.”

The ninth “whereas” clause of Executive Decree No. 693, dated March 11, 2011 (renewal of the declaration of a state of health emergency), states, in respect of territoriality: “In addition to the hospitals referred to in Executive Decree No. 618, dated January 10, 2011, it is necessary to include the hospital in the city of Puyo; Teófilo Dávila Hospital, in Machala; and Pablo Arturo Suárez Hospital, in Quito.” For this reason, article 1 decrees the renewal of 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; and Eugenio Espejo, Baca Ortiz and Pablo Arturo Suárez, in Quito.” The second part of article 3 orders that: “This decree is applicable to the territory of the Republic in its entirety.”

The renewal of the state of health emergency, with a scope of the entire territory of the Republic, prioritizes attention at certain public hospitals, having included three hospitals in addition to those named in the original declaration of a state of health emergency, indicating thereby that the emergency situation of the national public health system is continuing, in a national and transcendent context. Therefore, in consequence, the renewal involves all operate health units of the Ministry of Public Health, which should be attended to in an uninterrupted, permanent and urgent manner in respect of the emergency situation.

Article 3 of Executive Decree No. 693, dated March 11, 2011 (renewal of the state of health emergency), in respect of temporality, 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.” This is in accordance with the second part of the second paragraph of article 166 of the Constitution, which provides that, “If the grounds for the decree persist, it can be renewed for up to thirty additional days, with the appropriate parties to be notified of such renewal.”

In sum, the renewal of the state of health emergency set forth by Executive Decree No. 693, dated March 11, 2011, is found to be in conformity with the constitutional principles of territoriality and temporality, as established by the second paragraph of article 164 of the Constitution, given that they have complied with the constitutional conditions set forth in the second paragraph of article 166 of the Constitution (the renewal for 30 days when the grounds for the decree persist); as well as 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, in article 120, numeral 3 (territorial and temporal scope); article 121, numeral 4 (temporal and territorial limitations); as well as with the

procedural and substantive constitutional control requirements in respect of the measures adopted as set forth in the Organic Law of Jurisdictional Guarantees and Constitutional Control, in article 122, numeral 2 (territorial and temporal jurisdiction in respect of the state of emergency); and article 123, numeral 7 (the measures do not interrupt the normal functioning of the State).

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 constitutionality of the renewal of the state of health emergency, as established by Executive Decree No. 693, dated March 11, 2011, and published in Official Register No. 411, on March 23, 2011.
2. So notified, so published, so ordered.

SIGNED.) Dr. Patricio Pazmiño Freire, President.

SIGNED.) Dr. Marcia Ramos Benalcázar, General Secretary.

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, July 27, 2011. I hereby certify.

SIGNED.) Dr. Marcia Ramos Benalcázar, General Secretary.

CONSTITUTIONAL COURT.- Faithful copy of the original.- Reviewed by SIGNATURE.) Illegible.- SIGNATURE.) Illegible.- Quito, on August 24, 2011.- SIGNATURE.) Illegible, General Secretary.

Case No. 0001-11-EE

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

SIGNED.) Dr. Marcia Ramos Benalcázar, General Secretary.

CONSTITUTIONAL COURT.- Faithful copy of the original.- Reviewed by SIGNATURE.) Illegible.- SIGNATURE.) Illegible.- Quito, on August 24, 2011.- SIGNATURE.) Illegible, General Secretary.