

Quito, May 5, 2009

JUDGMENT: 0002 – 09- EE – CC

CASE NO.: 0002-09-EE

Constitutional opining judge: Dr. Roberto Bhrunis Lemarie

I. BACKGROUND

Admissibility Summary

Mr. Econ. Rafael Correa Delgado, Constitutional President of the Republic of Ecuador, pursuant to article 166 of the Political Constitution, sent the President of the Constitutional Court, via Official Letter No. T.4382-SGJ-09-1228 dated April 29, 2009, the notice of the Declaration of a State of Emergency in all of the national territory due to the possibility of arrival of the swine flu virus and its effects on human health, contained in Executive decree No. 1693 dated 29 April 2009.

The Secretary General of the Constitutional Court received the brief regarding notice of the Presidency of the Republic on April 30, 2009; on this date, the Constitutional Court performed the required judicial lottery as established by article 32 of the Rules of Procedure for the Exercise of the Competencies of the Constitutional Court for the Transitional Period, pursuant to which, the case was assigned to the Second Substantiating Chamber of the Constitutional Court.

On April 30, 2009, the Second Substantiating Chamber of the Constitutional Court for the Transitional period acknowledged receipt of the case and, on April 30, 2009, by virtue of the judicial lottery that was performed, it assigned the case to Constitutional Judge Dr. Roberto Bhrunis Lemarie.

II. REGULATION SUBJECT TO THE OPINION OF THE CONSTITUTIONAL COURT

The Constitutional Court examines the Constitutionality of Executive Decree No. 1693 dated April 29, 2009 regarding the Declaration of a State of Emergency, with a text that is comprehensively transcribed as follows:

**No. 1693
RAFAEL CORREA DELGADO
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC
WHEREAS:**

That the Constitution of the Republic of Ecuador provides: “Article 32. – Health is a right guaranteed by the State and its realization is linked to the exercise of other rights, including the right to *water*, food, education, physical culture, work, social security, healthy environments and others that support the good living.”

The Magna Charter provides in article 289 that the State shall protect the persons, collective peoples and nature against adverse effects of natural and anthropic disasters

via the prevention, given the risk, disaster mitigation, recovery and improvement of social, economic and environmental conditions, with the objective of minimizing the condition of vulnerability.

That the Organic Health Law orders, in its article 4. "The national health authority is the Ministry of Public Health, an entity that has the responsibility to exercise its duties to govern health; as well as the responsibility to apply, review and monitor the compliance with this law and the rules it establishes to enforce its full validity shall be mandatory.

That, as established by articles 52 *et seq.* of the Law of National Security, it is essential that we regulate the movement of institutions, goods and public resources so that mobilization bodies adopt the measures that are necessary for an organized, quick and safe adjustment of movable resources of the country as one of the means to archive national objectives; and,

That, given the international public health alert issued by the World Health Organization, that defined the swine flu epidemic in the United States and Mexico as a public health emergency of international importance, giving it a stage 4/6 and required that all of the countries of the world implement national prevention and contingency plans given the pandemic, the Emergency Operations Committee, at a national level, meeting in Plenary, today, April 29, 2009, resolved to request that the President of the Republic declare the State of Emergency as a preventive measure of the Ecuadorian Government for the protection of the health of the Ecuadorian population to confront a possible contagion of swine flu, that would cause serious national commotion; and,

In exercise of the powers conferred by article 164 of the Political Constitution of the Republic, 52 *et seq.* of the Law of National Security:

DECREES:

Article 1. – Declare a State of Emergency in all of the national territory. This declaration of the state of emergency is based upon the rapid transmission among persons of the virus of the referenced swine flu and the causation of harmful effects on human health, which can cause serious internal commotion.

The freedom of movement and of meeting of inhabitants of Ecuador may be limited in accordance with the evolution of the possibilities that the swine flu virus reaches the country and provokes an outbreak in swine flu.

Article 2. – The national, economic, military, police mobilization, especially of all the national health system, its public and private health networks in all of its areas, units, services, labs, medical and paramedic staff in all of its areas: local, regional and national, in order to face the possibility that the swine flu virus reaches the country and provokes an outbreak of swine flu that would cause a serious internal commotion.

The Ministry of Coordination of Internal and External Safety is ordered to coordinate the mobilization based on the information and recommendations of the Operations Committee that emerge on a national level and the guidelines that, in the scope of the

national health system, the Minister of Public Health must issue as a public authority who regulates the health sector of Ecuador, especially in the tasks of prevention, containment of the outbreak and contagion of swine flu and the assurance of the response capacity that is necessary for the situation.

The Committee of Emergent Operations, on a national level, shall adopt the respective measures that shall be communicated by the Ministry of Coordination of Internal and External Security to the competent authorities who, in the exercise of their responsibilities, attributions, powers or prerogatives, shall issue the necessary government and management acts to safeguard against the serious threat of the outbreak and contagion of the swine flu.

Further, via the competent authorities, the mobilization of public and private national recourses shall be made and the requirements considered by the Committee and such communicated by the Coordinating Minister of Internal and External Health, to face the situation that has been presented.

Art. 3. – The period of duration of this state of emergency is sixty days from the signature of this executive decree. The scope of territorial application is in the entire Republic.

Art. 4. – The Ministry of Finance shall situate sufficient resources to attend this state of emergency.

Art. 5. -- The Legislative and Audit Commission and the Constitutional Court shall be informed of this declaration.

Art. 6. – All the ministers and secretaries of State, especially the Coordinating Minister of Internal and External Health and the Minister of Public Health shall be in charge of the enforcement of this Executive Decree that shall enter into force as of the date of its promulgation, without prejudice to its publication in the Official Registry.

Issued at the National Palace, in San Francisco de Quito, Metropolitan District, today, April 29, 2009.

Signature: the Constitutional President of the Republic, Rafael Correa Delgado; the Coordinating Minister of Internal and External Safety, Miguel Carvajal Aguirre; and the Minister of Public Health, Caroline Chang.

III. CONSIDERATIONS OF THE CONSTITUTIONAL COURT

A. JURISDICTION

The Plenary of the Constitutional Court is competent to hear and opine on the constitutionality of this Declaration of a state of emergency given the possibility of arrival of the swine flu virus and its effects on human health, pursuant to Arts. 31, 32, 33, 34 35 and 36 of the Rules of Procedure for the Exercise of Powers of the

Constitutional Court for the Period of Transition published in Official Register No. 466 dated November 13, 2008¹.

¹**Art. 31. –“Scope.** – The Constitutional Court shall effect ex officio and immediately, the control of both the form and substance of the decrees that declare the state of emergency”;

Art. 32. –“Process. - Once the state of emergency has been decreed by the President of the Republic and the term contemplated in article 166 of the Constitution has transpired, the Plenary of the Constitutional Court shall acknowledge receipt of the declaration of the state of emergency and shall effect the respective judicial lottery so that the respective Substantiating Chamber analyzes its constitutionality and presents the draft judgment within a term of seventy-two hours, which shall be subject to knowledge and resolution of the Plenary, within the next two subsequent hours”;

Art. 33. – Procedural Analysis. – In order to perform the procedural analysis the Court shall verify that the decree or decrees contain: a) Signature of the President of the Republic; or he who exercises his or her duties; b) The causal or causals invoked, from those established in article 164 of the Constitution; c) The reasoning; d) The territorial scope of application; e) Enumeration of the facts that give rise to the declaration; f) The time of validity of any exceptional measures that were adopted; g) A clear and specific determination of the exceptional means adopted according to article 165 of the Constitution; h) The articulation of fundamental rights limited by the declaration and the scope of this limitation; and i) The other requirements established in the Constitution.

Art. 34. – Substantive review. – In order to perform the substantive review, the Constitutional Court shall verify: a) The existence of the facts that given to a declaration; b) The verification of the seriousness of the internal commotion; c) The evidence that this disturbance threatens institutional stability, the State security, or the peaceful cohabitation of persons; d) The evidence that all ordinary means are not sufficient to return institutional normalcy; e) Verification that the exceptional measures are strictly necessary; f) Existence of a causal relationship that is necessary among the right that gave rise to the declaration and the extraordinary means that were proposed to overcome the crisis; and, g) The verification of the reasonableness and proportionality of exceptional measures adopted regarding fundamental rights;

Art. 35. – Appraisal criteria. – In order to appraise the need reasonableness, and proportionality of the extraordinary measures established in the decree of state of emergency, the Constitutional Court shall bear the following in mind: a) That measures adopted un the state of emergency are necessary and proportion, that is, it is not possible to reasonably establish other less serious ones; b) That said measures are apt to not contribute to the solution of the fact that gave rise to the threat; c) That the scope of application of measures proposed is limited only to such tasks that are essential to conjure the disturbing fact; d) That the disturbance cannot be reviewed through the ordinary procedures established in the legal framework; and e) That there is no measure of emergency that requires

The Constitutional Court must opine on the constitutionality or unconstitutionality of each and every one of the decrees that establish state of emergencies, pursuant to the requirement of the President of the Republic or ex officio. Art. 436, num. 8 of the Constitution of the Republic of Ecuador establishes: “The Constitutional Court shall exercise, in addition to the powers conferred by law, the following powers: 8. Effect, ex officio, or immediately, the constitutional review of declarations of states of emergency, when they imply the suspension of constitutional rights.”

B. DETERMINATION OF THE LEGAL PROBLEMS TO BE REVIEWED IN THIS CASE

The Plenary must determine the constitutional and legal problems, and its answer is necessary to opine on this case.

In order to establish the constitutionality or unconstitutionality of the declaration of a State of Emergency, three fundamental legal problems must be analyzed: 1) legal nature and purpose of states of emergency; 2) matters regarding the fulfillment of procedural requirements established by Art. 166 of 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.

1). Legal nature and purpose of the declaration of a state of emergency

The declaration of a state of emergency implies, by nature, *the possibility* (that can be performed or not) of limiting the exercise of certain rights (thus, the term, emergency-in Spanish – Estado de Excepción), thus, the declaration cannot argue, previously, whether such rights will be limited or not, as it is materially impossible to know which will be the contingencies that, within the term of the emergency, can lead to the exercise of extraordinary prerogatives contained in the declaration. In this context, the phrase, “[...] when they imply the suspension of constitutional rights,” should not be conceived of as a condition precedent, but as a projection contemplated by the Constituency, as the declaration of emergency does not suspend rights as such, but rather, grants the possibility that, as a result of uncommon circumstances that led to its declaration, the exercise of some of them shall be limited.

Effectively, it is enough to consider the matters established by Art. 165 of the Constitution of the Republic of Ecuador which states: “During the state of emergency, the President of the Republic shall only be able to suspend or limit the exercise of a right to the inviolability of domicile, inviolability of correspondence, freedom of movement, freedom of association and meeting and freedom of information, pursuant to the terms noted by the Constitution. “In this context, beyond the mention or lack thereof of the rights the exercise thereof that could be limited by the declaration of the state of emergency, the only ones that could be limited are those mentioned above, as,

one or more substantive reasons, the Constitutional Court shall declare the unconstitutionality of the state of emergency, and its effect shall be its expulsion as legal framework.

if others are established as rights to be limited, that are not expressly contained in Art. 165 of the Constitution, their limitation cannot apply due to the fact that the majority of the doctrine, as well as legal-constitutional arrangements of the majority of countries that belong to western democracies, establish as rights subject to limitation in states of emergency, essentially, civil rights regarding the inviolability of domicile and correspondence, freedom of movement, association, meeting and information.

Finally, we must clarify that the state of emergency does not give *carte blanche* for an indiscriminate violation of rights, as it only grants the possibility (that could be exercised or not) of limiting certain civil rights, in which event, said limitation must be reasoned in light of the features of the concrete case.

The state of emergency is a normative-constitutional mechanism or arrangement that Democratic States have in order to face problems with a varied nature, as well as defend the rights of citizens who carry out their existence within the national territory and who, because of unforeseeable events, said rights cannot be protected by the regular legal-institutional mechanisms picked up by the Constitutional and legal normative.

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 institutions².

In this context, 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.

2) Procedural Analysis of Executive Decree 1693

Art. 166 of the Constitution of the Republic of Ecuador of 2008 provides that the Constitutional President of the Republic must inform of the declaration of the state of emergency and must send the text of the respective decree to the Constitutional Court and the National Assembly within the 48 hours after its issuance in order to perform the constitutional review. In this case, the decree of a declaration of a state of emergency, because of the possibility of the arrival of the swine flu virus and its effects on human health, issued by the President to the Republic on 29 April 2009, was issued on the same date via official letter No. T.4382-SGJ-09-1228 and was received by the Constitutional Court on April 30; therefore, the notice was effected within relevant terms.

In turn, Executive Decree 1693 dated April 29, 2009 satisfies the formal requirements established by Art. 33 of the Rules of Procedure for the Exercise of the Powers of the

² Inter-American Court of Human Rights, Consultative Opinion OC-8-87, "*El Habeas Corpus bajo la suspensión de garantías*". January 30, 1987, párr. 20.

Constitutional Court for the Period of Transition as it contains: a) the signature of the President of the Republic; b) it denotes a *serious internal commotion* as a real upcoming event, given the rapid transmission among people of the swine flu virus in the countries of the region; c) it reasons in a succinct but sufficient manner, the need to establish exceptional measures and intervene urgently in order to avoid the possibility of the swine flu virus from reaching the country and provoking an outbreak that would cause a serious internal commotion; d) establishes the entire Republic, as territorial scope of application of the state of emergency, e) mentions as facts that give rise to the declaration, the rapid transmission of the virus regarding the denominated swine flu and the unchaining of harmful events on human health, which could provoke a serious internal commotion; f) expresses that the time of validity of the exceptional measures corresponds to sixty (60) days; g) specifies, clearly and precisely, the exceptional measures to be taken: 1) The national, economic, military, police mobilization, especially of all the national health system, its public and private health networks in all of its areas, units, services, labs, medical and paramedic staff in all of its areas: local, regional and national, in order to face the possibility that the swine flu virus reaches the country and provokes an outbreak of swine flu that would cause a serious internal commotion; 2) The Ministry of Coordination of Internal and External Safety is ordered to coordinate the mobilization ordered based on the information and recommendations of the Operations Committee that emerge on a national level and the guidelines that, in the scope of the national health system, the Minister of Public Health must issue as a public authority who regulates the health sector of Ecuador, especially in the tasks of prevention, containment of the outbreak and contagion of swine flu and the assurance of the response capacity that is necessary for the situation; 3) The Committee of Emergent Operations, on a national level, shall adopt the respective measures that shall be communicated by the Ministry of Coordination of Internal and External Security to the competent authorities who, in the exercise of their responsibilities, attributions, powers or prerogatives, shall issue the necessary government and management acts to safeguard against the serious threat of the outbreak and contagion of the swine flu; 4) Further, via the competent authorities, the mobilization of public and private national recourses shall be made and the requirements considered by the Committee and such communicated by the Coordinating Minister of Internal and External Health, to face the situation that has been presented; h) the decree expressly establishes the fundamental rights that are limited by the declaration of a state of emergency: limiting the freedom of movement and meeting of the residents of Ecuador in accordance with the evolution of the possibilities that the swine flu virus will arrive in the country and cause a swine flu outbreak.-

For these reasons, the declaration of a state of emergency is considered to be procedurally adequate and, as such, its relevance shall be declared.

3) Substantive review of Executive Decree 1693

Right to health. – Articles 32 and 389 of the Constitution of the Republic of Ecuador³ enshrine this right as one of the fundamental pillars of the Constitutional State of

³ Article 32. – Health is a right guaranteed by the State, and its realization is linked to the exercise of other rights, including the right to water, nourishment

Rights and Justice. For these purposes, the State shall guarantee its residents, not only the right to health as a mere declaratory articulation, but also, a whole mechanism that leads to the feasibility of such, in which the State assumes a role as protagonist with respect to this right, formulation a policy and a national health system, that is conducive to protecting this right in its highest expression; and thus, determines the prevention given epidemiological disasters in order to reduce the vulnerability of its effects.

That the Organic Health Law orders, in its article 4. – “The national health authority is the Ministry of Public Health, an entity that is responsible for the exercise of its duties to govern health; as well as the responsibility of application, review and vigilance of compliance with this law and the rules that it orders for its full validity shall be mandatory;

xi. of the National Security Law, it is indispensable to order mobilization of the public institutions, assets and resources so that the mobilization bodies adopt the measures that are necessary to rapidly and safely adjust, in an organized fashion, the moveable resources of the country as one of the means to achieve national objectives.

This reasoning of constitutional and legal rules conforms to the American Convention on Human Rights – Arts. 16.2; and 26 that establish the restrictions contemplated by law, necessary in a democratic society, in the interest of national security, public security or order or to protect health... and the progressive obligation to guarantee Economic, Social and Cultural Rights (ESCR), by the signing States, to which Ecuador is a party. Although this is not a treaty, the preponderant doctrine has established in Consultative Opinion 10 that its Declaration constitutes a source of international obligations, where the States assume a common commitment of respecting fundamental rights and directly applying these.

General Obligation No. 3, point 2, of the ESCR Committee establishes that “a reasonably brief term should be adopted” to incorporate ESCR into the national scope, the Committee also establishes the State’s duty to protect equal access to healthcare” (GC 14, point 35).

Further, International Human Rights rules, such as, the American Declaration of Rights and Duties of Man, regarding the right to preserve the health and wellbeing of its article XI, states:

education, physical culture, work, social security, healthy environments and others that uphold the good life”.

That the Magna Carta provides in article 389 that the State shall protect persons, collective peoples and nature from the adverse effects of [...] anthropic origin via prevention, given a risk, disaster mitigation, recovery and improvement of the social, economic and environmental conditions in order to minimize the condition of vulnerability.

“Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”

The Universal Declaration of Human Rights

Art. 25.1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Art. 12.1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions, which would assure to all medical service and medical attention in the event of sickness.

In the same sense, the Constitutional Court for the Period of Transition cites General Comment No. 14, issued by the Human Rights Committee (ICESCR). Regarding epidemics, it considers that the State has an obligation regarding “the prevention, treatment and control of epidemic, endemic, occupational and other diseases” and for this purpose, it requires the establishment of adequate plans to fight health concerns, such as is the case of swine flu that bears a relationship to illnesses with an epidemiological nature. It is indispensable to recognize that this threat has a nature of emergency and its treatment and prevention is urgent. The state of emergency seeks to adequately, and in a temporary fashion, give attention both with its resources as well as initiatives related to the right to health, in the event of an outbreak of swine flu, in order to avoid its expansion and preserve the right to health and life. Among other matters, given an eventual outbreak of swine flu, the state of emergency places the following at the disposal of the medical system: individual, collective, public and private State efforts; as well as, relevant technologies, performance and vigilance given an eventual outbreak of swine flu, in order to safeguard human health. In this sense, if a swine flu outbreak occurs, the rights to freedom of movement and meeting shall be limited (Art. 1. Decree 1693-2009), designed as strategies to combat infectious health affectations.

In order to determine the substantive constitutionality of the state of emergency, we must perform an analysis under the parameters of article 34 of the Rules of Procedure in the following sense:

- a) **Determine the existence of the facts that give rise to the declaration.** – Given the international public health alert issued by the World Health Organization (WHO), which defined the swine flu epidemic in the United States and Mexico as a public health emergency of international importance, granting it stage 4/6 and requiring that all the countries in the world implement national prevention and contingency plans given the pandemic, the Emergency Operations Committee (EOC), at a national level, met in its Plenary on April 29, 2009, resolved to request that the President of the Republic declare the State of Emergency as a preventive measure of the Ecuadorian Government as a function of the protection of health of the Ecuadorian population, to face a possible contagion of swine flu, which would cause a serious national commotion.⁴ Thus, the real existence of a threat that constitutes an international alert situation by virtue of the existence of swine flu in Mexico and the United States expands, which highlights the international public health alert. These facts threaten the fundamental rights of the residents of Ecuador.
- b) **Prove the seriousness of the internal commotion.** – The state of emergency, according to article 1, is “[...] based on the rapid transmission of the virus regarding the denominated swine flu and the unchaining of harmful events on human health, which could provoke serious internal commotion.” This aspect shows the imminence and magnitude of the affectation, given which; 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.
- c) **Identify the evidence, showing that this disturbance threatens against the stability of institutions, security of the State or the peaceful cohabitation of persons.** – The international experience regarding the outbreak of the swine flu that occurred in Mexico and the United States has been determined to be an international emergency given the ease with which the virus expands; thus article 2 of the decree sets forth that “... the harmful events on human health, ...could provoke a serious internal commotion.” In this sense, the evidence related to the existence of the virus refers to the international experience of Mexico and the United States and other countries, a fact that determines the existence of the swine flu virus and its expansion in massive form, circumstances that have been publicized via social media. The expansion of the virus to national latitudes would cause social commotion and would weaken institutional stability, primarily in the health sector, the state’s security and peaceful cohabitation. An outbreak of the virus, without necessary prevention, would be limited to the resources to combat it; thus, the rights to freedom of movement and meeting of all inhabitants are limited (Art. 1 Decree 1693 – 2009).
- d) **Confirmation that ordinary means are not sufficient to return institutional normalcy.** – According to article 2 of the above Decree, “...the possibility that the virus reaches the country and causes an outbreak of swine flu would generate serious internal commotion.” The existence of the virus and its unsuspected reaches obligates, in an exceptional and emergent manner,

⁴ Executive Decree No. – 1693 – 2009”. Recitals.

[the State] to devise a strategy to confront the possibility that the swine flu could reach the country. The seriousness of this threat of the virus expanding constitutes real evidence that, by ordinary means, the swine flu virus cannot be confronted, and that it finally causes death. In the event of an outbreak of the virus, without necessary prevention, the institutionalism of the country would not be sufficient to combat sickness, thereby causing the sacrifice of the lives of persons who are infected. As these are fundamental duties of the State, the protection of the health and life of its residents, it must place all the public and private means at its disposal (Arts. 2 and 3 of Decree 1693- 2009) for the protection of those rights.

- e) **Confirmation that exceptional measures are strictly necessary.** In having to do with an epidemic, it is evident that the ordinary means are not sufficient to combat such, as explained by Art. 2, subparagraph second of the above Decree and provides: "[...] 2) the Ministry of Coordination of Internal and External Safety is ordered to coordinate the mobilization ordered based on the information and recommendations of the Operations Committee that emerge on a national level and the guidelines that, in the scope of the national health system, the Minister of Public Health must issue as a public authority who regulates the health sector of Ecuador, especially in the tasks of prevention, containment of the outbreak and contagion of swine flu and the assurance of the response capacity that is necessary for the situation."
- f) **The causal need between the facts that gave rise to the declaration and the extraordinary measures proposed to overcome the crises.** – Among the facts and the measures, there is a direct relationship by virtue of the threat that the swine flu virus would seriously affect the rights to health and life, for this reason the authorities [...] shall issue the necessary government and management acts to safeguard against the serious threat of the outbreak and contagion of the swine flu." (Decree No. 1693 – 2009).
- g) **The confirmation of reasonableness and proportionality of the exceptional measures adopted regarding fundamental rights.** – The rights that would be limited, in the event of the epidemic, would be “freedom of movement and meeting”, principles recognized by articles 66.13 and 66.14 of the Constitution of the Republic of Ecuador. The limitation is adequate and justified: in examining the state of emergency, we highlight the following aspects: 1) the respect for deductive logic rules. Swine flu exists and has been declared by the World Health Organization, WHO, as an epidemic of great levels of expansion; 2) the exceptional measure conforms to the principle of practical reasonableness. If there is no adequate preparation given the virus threat, the current institutionalism would likely be inadequate to combat an outbreak of swine flu within the country; 3) the measure is founded on constitutional bases, pursuant to article 165 of the Constitution of the Republic of Ecuador. Thus, we consider that the decision to decree a state of emergency is based on adequate and proportional reasoning; if an epidemic outbreak exists, relatively, the constitutional rights to freedom of movement and meeting would be restricted; in the event that such a decision is made, the President of the Republic shall inform the Constitutional Court for the Period of Transition regarding the adoption of measures that restrict the referenced decrees.

IV. DECISION

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; administering constitutional justice and by a mandate of the Constitution of the Republic of Ecuador, the Plenary of the Constitutional Court for the Period of Transition issues the following:

JUDGMENT:

1. Declare the Constitutionality of the State of Emergency contained in Executive Decree No. 1693 dated April 29, 2009.
2. Order publication in the Official Register. – NOTIFY AND FULFILL. –

Hon. Patricio Pazmiño Freire
PRESIDENT

Arturo Larrea Jijón
SECRETARY GENERAL

Confirmation: For this reason, the above Judgment was approved by the Plenary of the Constitutional Court for the Period of Transition, with eight votes in favor of Hon. Roberto Bhrunis Lemarie, Alfonso Luz Yunes, Hernando Morales Vinueza, Diego Pazmiño Holguín, Nina Pacari Vega, Manuel Viteri Olvera, Edgar Zárate Zárate and Patricio Pazmiño Freire, without the presence of Hon. Patricio Herrera Betancourt, in session on Tuesday, May 5th, two thousand and nine. – I hereby certify.

Arturo Larrea Jijón
SECRETARY GENERAL