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Quito, Metropolitan District, July 27, 2011

[DECISION N.º 007-11-DEC-CC](#)

CASE N. 0007-11-EE

Presiding Constitutional Judge: Dr. Patricio Pazmiño Freire

THE CONSTITUTIONAL COURT,

For the transition period

## I. BACKGROUND

### Summary of Admissibility

Rafael Correa Delgado, Constitutional President of the Republic, acting under article 166 of the Constitution of the Republic, through official letter N.º T.6039-SNJ-11-969, dated July 17, 2011, with certified copy attached, notified the President of the Constitutional Court of Executive Decree N.º 82, which declares a state of health emergency throughout the entire territory of the republic.

The General Secretary of the Constitutional Court for the transition period received the President of the Republic's notification on July 18, 2011.

In accordance with the assignment by lottery carried out by the Plenary of the Constitutional Court during its session on July 21, 2011, the case was remitted to Judge Patricio Pazmiño Freire, accompanied by memorandum N.º 493-CC-SG, dated July 21, 2011, which was received on July 22, 2011.

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

The Constitutional Court will review the constitutionality of Executive Decree No. 827 declaring the state of emergency, the text of which is described in its entirety below:

No. 827

RAFAEL CORREA DELGADO

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC:

WHEREAS:

Numerals 4 and 7 of Article 83 of the Constitution of the Republic establish that it is the right and responsibility of all Ecuadorians to “cooperate in order to maintain the peace and public safety,” as well as to “promote the common good and to put the public interest above private interests, in accordance with standards of well-being (*el buen vivir*).”

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;

Numerals 18 and 22 of Article 6 of the Organic Law of Health set forth that it is the responsibility of the Ministry of Public Health to regulate and to control the production of products for human consumption, as well as to “regulate, control, or prohibit, as necessary, in coordination with other competent authorities, the production, importation, commercialization, publicity and use of toxic or dangerous substances that may pose a risk to human health”;

Paragraph c) of Article 8 of the aforementioned law sets forth that it is both an individual and a collective duty in respect of public health to comply with the recommendations given by health personnel in order to avoid risks to one’s family or community;

Various cases of methanol poisoning have been reported in the Province of Los Ríos, resulting in the death of more than 15 people and threatening the lives of many more. This poisoning was found to be due to the adulteration of alcoholic beverages sold in the aforementioned area; and

In exercise of the powers conferred on the President by articles 164 et seq. of the Constitution of the Republic;

IT IS HEREBY DECREED:

Article 1.- A state of health emergency is declared throughout the Ecuadorian territory due to the serious cases of poisoning due to the consumption of adulterated alcoholic beverages that have been reported in the last few days.

Article 2. The consumption of all alcoholic beverages throughout the national territory is expressly prohibited for a period of seventy-two (72) hours, in order to control the cases of methanol poisoning that have already resulted in the death of several Ecuadorians.

Article 3. The sale or provision of any type of alcoholic beverage is expressly prohibited throughout the national territory for a period of seventy-two (72) hours, in all commercial locations, whether licensed for the sale of liquor, the sale of food, or in any other location where alcoholic beverages are sold.

Article 4. All locations that provide health services, whether public or private, are ordered to provide timely, efficient and quality attention to those persons presenting with symptoms of poisoning due to adulterated alcoholic beverages.

Article 5. The Ministries of Health and of the Interior are ordered, with the assistance of the police, as well as the armed forces and the national guard, to carry out those operations and controls necessary to ensure compliance with these provisions at a national level, and for all adulterated products to be located and disposed of, and for those responsible for their production to be found and placed at the disposition of the relevant authorities.

The Ministry of Health is authorized to make use of all measures available to it in the case of a health emergency as set forth by the Organic Law of Health.

Article 6. The state of emergency may be in effect for a period of up to sixty days as of the date of signature of this Executive Decree. The state of emergency shall apply in the territory of the Republic in its entirety.

Article 7. The National Assembly and the Constitutional Court shall be notified of this decree.

In Quito, Metropolitan District, on July 17, 2011.

s.) Rafael Correa Delgado, CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

This is a faithful copy of the original, in two pages.- I HEREBY CERTIFY. Quito, on July 17, 2011

s.) Attorney OSCAR PICO SOLORZANO, National Undersecretary of the Public Administration.”

### III. CONSIDERATIONS OF THE CONSTITUTIONAL COURT

#### Jurisdiction

The Plenary of the Constitutional Court for the transition period is competent to hear and resolve the case for the constitutionality of the declaration of a state of health emergency throughout the national territory contained in Executive Decree 827, dated July 17, 2011, in accordance with the provisions of articles 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 119, 120, 121, 122, 123, 124 and 125 of the Organic Law of Judicial Guarantees and Constitutional Control, published in the Second Supplement to Official Register N. 52, on October 22, 2009.<sup>1</sup>

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<sup>1</sup> Art. 119.- Purpose and scope of control.- The procedures in respect of constitutional control of a state of emergency are designed to guarantee the full enjoyment of constitutional rights and to safeguard the principle of separation and balance of powers.

The Constitutional Court shall carry out a mandatory review of the procedural and substantive rights to declare a state of emergency, and of those states of emergency declared on this basis. The review procedure shall not affect the application of said lawful acts.

Art. 120.- Procedural control of the declaration of a state of emergency.- The Constitutional Court shall verify that the declaration of the state of emergency and the corresponding measures ordered comply with the following requirements:

The identification of the facts and the constitutional premise on which they are based;

The justification of the declaration;

The territorial and temporal scope of the declaration;

The rights that may be limited by the declaration, as applicable; and,

Such notifications as must be sent in accordance with the Constitution and international instruments.

Art. 121.- Substantive control of the declaration of a state of emergency.- The Constitutional Court shall undertake a substantive review of the declaration of the state of emergency, which will require verification of, at a minimum, the following:

That the facts alleged in the justification actually have occurred;

That the facts giving rise to the declaration actually constitute an act of aggression, an international or domestic armed conflict, serious domestic disturbance, public calamity or natural disaster;

That the facts giving rise to the declaration cannot be dealt with through ordinary constitutional channels; and,

That the declaration complies with the temporal and territorial limits established by the Constitution of the Republic.

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Art. 122.- Procedural control of measures ordered due to the state of emergency.- The Constitutional Court shall verify that those measures adopted based on the declaration of the state of emergency comply with, at a minimum, the following requirements:

The measures were ordered by decree, in accordance with the procedural formalities established by the legal framework; and,

The measures are within the material, territorial and temporal limits established for a declaration of a state of emergency.

Art. 123.- Substantive control of measures ordered due to the state of emergency.- For purposes of substantive control, the Constitutional Court shall verify that the measures adopted based on the declaration of the state of emergency comply with the following requirements:

The measures must be strictly necessary to deal with the facts of the situation giving rise to the declaration, and ordinary measures would be insufficient in order to achieve this purpose;

The measures are proportional to the facts giving rise to the declaration;

There is a direct and immediate causal relationship between the facts giving rise to the declaration and the measures adopted in respect thereof;

The measures are appropriate to deal with the facts giving rise to the declaration;

There is no other measure that would create a lesser impact in terms of the population's rights and guarantees;

The measures do not affect the essential nucleus of constitutional rights, and respect all intangible rights in their entirety; and,

The measures do not interrupt or affect the normal functioning of the State.

Art. 124.- Delivery of the decree to the Constitutional Court.- The procedure for constitutional control in respect of a state of emergency shall be subject to the following rules:

The President shall remit the decree to the Constitutional Court within forty-eight hours of his or her signature of the decree.

In the case that this requirement is not complied with, the Constitutional Court may recognize the decree *ex officio*.

In situations not specifically dealt with in this chapter, the rules of general procedure shall be followed.

Art. 125.- Coexistence of constitutional control with political control.- The declaration of constitutionality shall have no effect on the exercise of political control in respect of a state of emergency, nor on the revocation of the respective decrees by the National Assembly.

Therefore, within the constitutional and legal framework, it is the Constitutional Court's responsibility to rule on the constitutionality of each and all decrees declaring a state of emergency, as required by the President of the Republic.

#### Determination of the legal issues to be analyzed by the Court

In order to resolve the present case, it is necessary for the Constitutional Court to verify that the application of a decree that orders a state of emergency is duly motivated and respects the limitations imposed by the Constitution and the law. The interpreter, then, must analyze the facts and the need for the declaration of a state of emergency, with the understanding that the ultimate purpose of the state of emergency is the protection of the populace's rights, which may be restricted by the extraordinary circumstances that give rise to this type of declaration.

Indeed, in accordance with the principle of controllability, which is related to such necessary official control over a declaration of a state of emergency, it is the Constitutional Court's responsibility to review its constitutionality, in order to avoid abuses and an excessive use of this extraordinary power. Constitutional control of the state of emergency has become an appropriate judicial guarantee to protect the full enjoyment of the liberties of the populace, even in emergency circumstances.

In this respect, in order to establish the constitutionality or the unconstitutionality of a state of emergency, it is necessary to review three fundamental legal questions in respect thereof: 1) the legal nature and purpose of the state of emergency; 2) compliance with the procedural requirements set forth in Article 166 of the Constitution and Article 120 of the Organic Law of Judicial Guarantees and Constitutional Control; and, 3) compliance with the substantive requirements set forth in Article 121 of the Organic Law of Judicial Guarantees and Constitutional Control.

#### 1.- The legal nature and purpose of the declaration of a state of emergency

The state of emergency is a normative constitutional tool of extraordinary character, the adoption of which is necessary, in accordance with Article 164 of the Constitution of the Republic, in the following cases: aggression, armed conflict, serious domestic disturbance, public calamity, and natural disaster.<sup>2</sup>

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<sup>2</sup> Article 4 of the International Covenant on Civil and Political Rights refers to, "public emergency which threatens the life of the nation..." For its part, the American Convention makes reference to the adoption of a state of emergency in the case of, "war, public danger, or other emergency that threatens the independence or security of a State Party [...]."

These circumstances presuppose that the State recognizes the rule of law and its duty to guarantee its own security and that of those persons within its territory, who, due to the situation giving rise to the state of emergency, may find themselves in serious danger. In this sense, it is clear that the exercise of this power is appropriate only in exceptional circumstances, and even in such context only the suspension of certain rights and freedoms, which are exhaustively enumerated in Article 165 of the Constitution of the Republic, is permitted. Article 165 sets forth that: "During the State of Emergency, the President of the Republic can only suspend or limit the exercise of the right to the inviolability of domicile, inviolability of correspondence, freedom of movement, freedom to associate and assemble, and freedom of information, under the terms set forth by the Constitution."

It is understood that in the case of such adverse circumstances, the adoption of the state of emergency, and the eventual suspension of rights that such declaration may lead to, may, in the words of the Inter American Court of Human Rights, "the only way to deal with situations of public emergency and to safeguard the higher values of a democratic society."<sup>3</sup>

However, this does not mean that in the framework of a state of emergency, the State may exercise unlimited authority or that the rule of law will be temporarily suspended. On the contrary, in light of such circumstances governments may not engage in illegal conduct, but must at all times comply with the law, given that the sole and true purpose of the state of emergency is respect for the rights of the population and the defense of democracy and State institutions.<sup>4</sup>

In this context, considering that the state of emergency is only applicable in extraordinary circumstances, which, once the existence of such circumstances has been confirmed, and in light of their seriousness, cannot be dealt with through ordinary measures provided for by the law, from the facts giving rise to the decree under analysis, it is clear that the situation in the country due to availability on the market of adulterated alcoholic beverages that have caused the death of more than 15 people, is a serious situation affecting many people and with the potential to affect many more. This constitutes an exceptional circumstance and merits the adoption of urgent measures in order to prevent the loss of additional human lives.

Therefore, the Court finds that the purpose of Decree No. 827 is specifically to protect the rights to life and health of the inhabitants of Ecuador, in circumstances in which the consumption of adulterated alcoholic beverages could result in a violation of such rights.

Formulation of the nature of the emergency in accordance with the principle of necessity

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<sup>3</sup>Inter American Court of Human Rights. Advisory Opinion OC-8-87, Habeas corpus under the suspension of guarantees, 1987, paragraph 27.

<sup>4</sup>Inter American Court of Human Rights. Advisory Opinion OC-8-87, Habeas corpus under the suspension of guarantees, 1987, paragraph 20.

The essence of the state of emergency is directly related to its necessity<sup>5</sup> and to the crisis at hand; therefore the president of the republic may activate this mechanism only for situations giving rise to circumstances that involve a certain level of seriousness so as to merit the adoption of extraordinary measures. In the case at hand, the executive decree seeks to avoid danger to the health and life of the population, given the existence of adulterated alcoholic beverages that have been found in various provinces in the country.

Therefore, the principle of necessity, as a directive that, among others, must be observed in order to respect the democratic system, respecting human rights within the framework of a state of emergency, makes reference to the imposition of a state of emergency when other ordinary measures would not be sufficient to confront the risk posed by the situation. Due to this, the threat must be real, serious, imminent and objective. From the facts of the case at hand, we may conclude that the threat does meet these characteristics: at the moment of the issuance of the decree, alcohol adulterated with methanol has resulted in the death of 15 people, and many more are seriously ill. As a result, we consider that this exceptional threat merits a declaration of a state of emergency, which seeks to urgently and effectively protect the life and health of the populace.

Now, in order to verify that the measures imposed for this purpose are objectively justifiable, it is necessary to undertake the following analysis in respect of procedural and substantive constitutional control, in the following manner:

## 2.-Analysis of procedural formalities of the declaration of the state of emergency

Article 166 of the Political Constitution sets forth that for purposes of constitutional control, the president of the republic shall notify the Constitutional Court and the National Assembly of the declaration of the state of emergency and shall remit the text of the respective decree to these bodies within 48 hours of the issuance thereof, a condition that is also set forth by numeral 1 of Article 124 of the Organic Law of Judicial Guarantees and Constitutional Control.

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<sup>5</sup> CONSTITUTIONAL COURT FOR THE TRANSITION PERIOD, sentence in Case No.- 010-10-EE (JP) Dr. Nina Pacari, quoting ALBERTO DALLA: "Constitutional emergencies and legislative control" (*"Emergencia constitucional y control de la delegación legislativa"*), in *Defense of the Constitution, Guarantees and Controls (Defensa de la Constitución, Garantismo y Controles)*; Ed. Víctor Bazán; Ediar / UNAM, México, 2003, p. 1063. "The doctrine of necessity responds to the question of whether the determination of the reason or the base for the simple exercise of power—which is in principle illegal—should be considered lawful (a posteriori legitimation). An illegal action may be sanctioned by the law, as long as it is based in necessity, or a result of a state of necessity. [...] Even when the State's reasoning incorporates the principle of necessity as set forth in constitutional texts, the justification has authoritarian roots if the basis is to eliminate enemies of the State [...]."



The decree declaring a state of health emergency throughout the national territory contained in Executive Decree 827 was issued by the President of the Republic on July 17, 2011, in the city of Quito, and sent to the Secretary of the Constitutional Court by way of official letter N.º T. T.6039-SNJ-11-969 on July 17, 2011, and received on July 18, 2011. Therefore, the notification was effected within the appropriate time period.

#### Procedural control of the declaration of a state of emergency

In this respect, Article 120 of the Organic Law of Judicial Guarantees and Constitutional Control indicates that it is the Court's duty to confirm that the declaration complies with the requirements of:

1.-The identification of the facts and the constitutional premise on which the declaration is based;

The whereas clauses of the decree clearly identify the facts giving rise to the state of emergency, indicating that various cases of methanol poisoning have been reported in the province of Los Ríos, which has led to the deaths of the more than fifteen people and the serious illness of many more. This poisoning is the result of the consumption of adulterated alcoholic beverages sold in the aforementioned area. Article 1 of the cited decree clearly states that the state of emergency is declared in respect of the health risk created by the potential to be poisoned by the consumption of adulterated alcoholic beverages [...]. In turn, the constitutional provisions on which the declaration is based are Article 83, numerals 4 and 7, which establish that it is the duty and responsibility of all Ecuadorians to cooperate in order to maintain the peace and public order, as well as to promote the common good and the public interest over and above any personal interest, in accordance with standards of well-being (*el buen vivir*). The decree also refers to Article 361, which establishes that the State is sovereign in matters of public health, and therefore empowered to legalize, regulate and control all activities related to health issues; to Article 6 of the Organic Law of Health, which sets forth that it is the duty of the Ministry of Public Health to regulate and control the production of health products for human use; and to Article 8 of the same law, which states that it is a collective and individual responsibility to comply at all times with recommendations given by public health professionals in order to avoid risks in one's personal and family life.

Despite the fact that the declaration does not specifically state the constitutional provision related to the state of emergency, this is a procedural requirement that does not merit on its own a declaration of unconstitutionality, and may be corrected and explained through the analysis of the facts giving rise to the declaration of the state of emergency. In fact, it is clear that the facts giving rise to the declaration may be classified within the category of a public calamity, given that they have given rise to a situation of "distress or misfortune that affects many people."<sup>6</sup> At the time of this constitutionality analysis of the

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<sup>6</sup>Dictionary of the *Real Academia Española*.

decree in question, at least 29 people have died as a result of poisoning from consumption of adulterated alcoholic beverages, according to publicly available information.<sup>7</sup>

## 2.- Justification of the declaration and the measures adopted in respect of the state of emergency

The decree sufficiently explains the necessity to take urgent measures in order to avoid the loss of more human lives and to safeguard the health of the public. Therefore, the decree orders measures intended to prevent the consumption and sale of all types of alcoholic beverages, and orders that efficient and immediate medical attention be provided to persons presenting at health facilities with symptoms of this type of poisoning, as well as ordered the authorities to take the corresponding actions to enforce these measures.

## 3.-Territorial and temporal scope of the decree

Due to its nature, the state of emergency must always be temporary, and as such may only endure while the situation giving rise to it is ongoing. In addition, the measures adopted in respect thereof must be limited to the geographic territory in which they are necessary. In the case at hand, we may observe that the state of emergency is necessary throughout the national territory, given that it is not possible to identify which individual provinces are at risk, and with the awareness that cases of poisoning and deaths have been reported in various provinces. In this respect, the decree establishes that the territorial scope of application is throughout the republic, and in respect of the temporal element, the decree and the emergency measures shall be in effect for a period of sixty (60) days.

## 4.-Rights that may be limited by the declaration, if applicable

The decree does not set forth the specific constitutional rights that it may limit. However, from a reading of the decree it is clear that the most important limitation that will result from the imposition of the state of emergency is the consumption and the sale of all types of alcoholic beverages. The decree states that, “the sale or provision of any type of alcoholic beverage is expressly prohibited throughout the national territory for a period of seventy-two (72) hours, in all commercial locations, whether licensed for the sale of liquor, the sale of food, or in any other location where alcoholic beverages are sold.” In a broad interpretation of constitutional rights, it could be argued that the decree therefore limits the constitutional right set forth in numeral 15, Article 66, of the Constitution, which provides for

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<sup>7</sup> It is important to note that in respect of the principle of procedural honesty, as set forth in Article 27 of ORGANIC CODE OF THE JUDICIAL BRANCH, information that is publicly available does not require separate proof, and need only be accredited by a judge. Therefore, this fact is taken into account although it does not form part of the record. This note is made given that as of the date of the issuance of the Decree, 15 people had died, although by the time this sentence was written, the number had risen to 29.

the “right to carry out economic activities individually or collectively, in accordance with the principles of solidarity, and social and environmental responsibility.” However, we note that this right contains a limitation within itself, and therefore it may potentially be restricted by the principles of solidarity and social and environmental responsibility. Therefore, we may interpret that, given the circumstances giving rise to the decree, this right may be restricted in accordance with the principle of social responsibility, which must guide and limit economic activities, particularly those dedicated to the production, distribution or commercialization of products for human consumption, the ingestion of which may be fatal. We are dealing with a right that contains a statement of fact and a restrictive clause that provides a limitation to its content. In light of the facts giving rise to the state of emergency, the restrictive clause acts to limit the application of the right. In any case, it is important to note that the right is restricted by procedural and substantive norms in accordance with the Constitution, as we will see further on, and it should be noted therefore that the violation of a fundamental right is something distinct from its restriction.<sup>8</sup> In this respect, there are here objective circumstances that justify the restriction of the right to sell, distribute and commercialize alcohol, and therefore there is no violation of this right, having determined that the adoption of such measure is neither arbitrary nor unjustified, and it is in conformance with the principles of social responsibility and the protection of other constitutional rights.

#### 5.-Notifications in accordance with the Constitution and international instruments

Article 7 of Decree 827 orders that the National Assembly and the Constitutional Court be notified of the decree in accordance with the provisions of the Constitution. This Court does not see a need to notify the Organization of American States or the United Nations, as from the analysis of the decree we conclude that there is no restriction of any rights protected by the American Convention on Human Rights or the International Covenant on Civil and Political Rights, Articles 27 and 4 of which, respectively, set forth the obligation of States parties to notify the corresponding bodies of the suspension of any State obligations provided for under the respective instrument.

#### Procedural control of the measures ordered in respect of the state of emergency

In respect of procedural control of those measures ordered based on the declaration of a state of emergency as contemplated by Article 122 of the Organic Law of Judicial Guarantees and Constitutional Control, such measures must comply at a minimum with the following procedural requirements: 1.- The measures were ordered by decree, in accordance with the procedural formalities established by the legal framework; and, 2.- The measures are within the material, territorial and temporal limits established for a declaration of a state of emergency. From our review of the decree in question, these conditions have been fully complied with, in light of the fact that the decree under analysis has been

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<sup>8</sup>ALEXY, ROBERT, *Theory of Fundamental Rights (Teoría de los Derechos Fundamentales)*, Madrid, Center for Constitutional Studies, 2008, p. 242

issued respecting the formalities that our judicial system imposes. In fact, the state of emergency and the measures adopted based on it were ordered by economist Rafael Correa Delgado, Constitutional President of the Republic of Ecuador, based on the powers conferred to him by Article 164 of the Constitution of the Republic.

For these reasons, the Court finds that the declaration of the state of emergency is procedurally compliant, and therefore declares its constitutionality in this respect.

#### Analysis of the substantive provisions of the declaration of the state of emergency

It is necessary to identify the substantive framework of the fundamental rights in respect of which the Constitutional Court will make its ruling on the declaration of the state of emergency. Such rights in this case are the rights to health and life, the protection of which in this case requires the temporary prohibition of the consumption and sale of alcoholic beverages, which have caused the death of various persons and caused a serious risk to the health of many more. The right to health comprehends “a fundamental human right, indispensable for the exercise of all other human rights [...]”<sup>9</sup> In this sense, the right to health comprehends “an immediate predicate to the right to life, in the sense that a threat to a person’s health is equivalent to a threat to his or her life itself.”<sup>10</sup>

From this, we see that the State’s primary responsibilities are to guarantee, without any discrimination whatsoever, the effective enjoyment of the human rights set forth in the Constitution, but particularly the rights to education, health, food, social security, and water for the State’s inhabitants. The State plays a primary role in the protection of these rights, and therefore, according to Article 32 of the Constitution, the State is committed to guaranteeing the exercise of the right to health through economic, social and cultural policies, as well as permanent and timely access to health services.

The substantive constitutional control of the state of emergency has two dimensions: the review of the substance of the decree and the review of the substance of the measures, which are carried out within the parameters of Articles 121 and 123 of the Organic Law of Judicial Guarantees and Constitutional Control, in the following manner:

#### Substantive constitutional control of the declaration of the state of emergency

##### Parameters of the declaration

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<sup>9</sup>United Nations.Committee on Economic, Social and Cultural Rights. General Observation No. 14, The right to enjoy the highest possible standard of health, General Assembly, Geneva, 2000.

<sup>10</sup> COLOMBIA, Decision of the Administrative Court of Cundinamarca. Class action. File 02 – 022. Plaintiff: Claudia Sampredo et al. Presiding Judge: Dr. Ayala Vides Paba. June 13, 2003. Bogota, D.C., June 13, 2003. Available at: <http://co.vlex.com/vid/30537305>, last accessed on October 15, 2008.

In order to carry out the substantive constitutional control of the declaration of a state of emergency, the following is taken into account:

1.- That the facts alleged to have given rise to the declaration have actually occurred

The need to adopt emergency measures in order to prevent the death and illness of any more persons due to poisoning from the consumption of adulterated alcoholic beverages justifies the executive decree of a state of emergency.

2.- That the facts giving rise to the declaration constitute an act of aggression, an international or domestic armed conflict, a serious civil disturbance, public calamity or natural disaster

According to Executive Decree No. 827, it is confirmed that the declaration was motivated by the factual circumstances set forth above, along with the pertinent constitutional provisions. Based on this, there is a need to adopt emergency measures in order to prevent the current situation of public calamity from deteriorating and affecting more people in the Ecuadorian territory.

3. The facts giving rise to the declaration cannot be dealt with through ordinary constitutional measures

As previously noted, the facts in the present case merit the declaration of a state of emergency, given that normal mechanisms are not sufficient to confront the situation at hand, which has put the lives of thousands of people at risk. If the State does not act urgently to intervene through the adoption of extraordinary measures in order to avoid the death of more people, and conventional measures are applied to restrict the consumption and sale of alcoholic beverages, the consequences could be irreversible. The Executive Branch, through Executive Decree No. 827, seeks to confront this situation by ordering the prohibition of the sale and consumption of all alcoholic beverages, urgent, prompt and efficient medical attention in all public and private health facilities, and the mobilization of the relevant authorities in order to enforce these measures.

Substantive constitutional control of the measures ordered based on the declaration of the state of emergency

1. In order to justify the state of emergency ordered by Executive Decree No. 827, the gravity of the situation must be demonstrated, as well as the fact that there is no other less onerous measure available to confront the situation.

In this respect, as previously indicated, it has been demonstrated that there is no other ordinary measure appropriate and sufficient to confront the emergency situation at hand. The situation requires extraordinary measures, such as the suspension of the sale and consumption of alcoholic beverages for 72 hours, in order to avoid the death or poisoning of more persons. The measures adopted are strictly necessary in order to fulfill this purpose, and therefore the Constitutional Court considers that, in

general terms, there is a connection between the measures adopted by the aforementioned decree and the state of emergency, which seeks to protect the life and health of the populace. Therefore, the State's immediate and direct intervention is warranted through the exercise of the powers of the Executive Branch, including the mobilization of the relevant authorities in order to enforce the measures ordered.

## 2.- The measures must be proportional to the facts giving rise to the declaration

The restriction of the right to consume and sell all types of alcoholic beverages is justified, even when such right is understood in the context of the countervailing right to carry out economic activities, as set forth in Article 66, numeral 15, of the Constitution, given that it has been established that this measure is proportional in light of the facts giving rise to the declaration. In fact, to be proportional means that, "the greater the degree of non-compliance with or impairment of a principle, the greater the importance of the satisfaction of the countervailing principle."<sup>11</sup> The analysis of this point requires the Court to determine if the degree of non-compliance with or impairment of the principle in question is low, average or serious, and to confirm the satisfaction of the principle in question, and finally, the justification of the satisfaction of the countervailing principle. In this respect, an analysis based on a scale of value allows us to determine that the degree of satisfaction, non-compliance and importance of the affected principles is the following: a) the need to satisfy the rights to life and to health of the populace through the prohibition of the sale and consumption of adulterated alcoholic beverages is serious, in the sense that the declarationsought to avoid the death of more persons within the 72 hours following the discovery of alcoholic beverages adulterated with methanol. In turn, the effect on the right to carry out economic activities, which includes the sale of alcohol, was—in the opinion of this Court, minimal. In fact, the prohibition of all sales of any type of alcoholic beverage was in effect for 72 hours, from Sunday, July 17, 2011, the date on which the emergency decree was issued, until the following Wednesday afternoon. The prohibition in effect during that period was in fact in effect during a time of the week during which the sale of alcoholic beverages is significantly lower than on days of higher consumption. b) Therefore, there is a serious (high) degree of satisfaction in respect of the rights to health and to life, since the prohibition of consumption and sale of alcoholic beverages helped to ensure that there were no additional cases of poisoning. c) Having verified the degree of satisfaction, the goal of the measure adopted is therefore justified, above all in light of the fundamental and inalienable nature of the rights that such measures were imposed in order to protect: life and health. Therefore, the measure is proportional, as it satisfies its purpose without imposing any excessive restriction on any countervailing rights.

## 3.-Direct and immediate causal relationship between the facts giving rise to the declaration and the measures adopted

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<sup>11</sup>Alexy, Robert, Theory... p. 105.

As noted in numeral 1 of this section, this Court finds that there is a causal or connective relationship between the facts giving rise to the declaration of the state of emergency, and the measures ordered to deal with such situation.

#### 4.-Appropriateness of the measures in respect of the facts giving rise to the declaration

In respect of this principle, the measure must seek to fulfill a valid constitutional purpose. This Court finds that the declaration of the state of emergency sought to protect the rights to life and to health. In this respect, the right to health cannot only be understood as the right to be healthy, given that it also includes the right to not suffer injury, for example, the right to not have one's health affected by poisoning from adulterated alcoholic beverages. It is confirmed, then, that the executive decree here in question is appropriate, because it contributes to a legitimate constitutional purpose.

#### 5.-The present state of emergency does not restrict the essential nucleus of fundamental rights

From this Court's analysis as set forth in the preceding paragraphs, it is established that there is no restriction on the essential nucleus of fundamental rights, particularly considering that the exercise of the right that is in this case to be temporarily suspended is a right that is conditioned on the principles of solidarity, and economic and social responsibility. In addition, it is clear that Decree No. 827 does not limit any inalienable right.

#### 6.-The declaration does not interrupt or alter the normal functioning of the State

It is clear that the declaration of the state of emergency does not seriously suspend the exercise of any of the rights protected by the Constitution of the Republic, and does not affect the separation of powers, as guaranteed in any democracy.

Given that the motivations of the decree herein examined have been found to be sound and that the procedural and substantive formalities in respect of its issuance have been complied with, this Court finds that the declaration of the state of emergency was both relevant and necessary, as it seeks to prevent a public calamity, and thereby protect the life and health of persons within the Ecuadorian territory.

## 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. The procedural and substantive constitutionality of the declaration of a state of health emergency in accordance with Executive Decree No. 827, dated July 17, 2011, throughout the national territory, is hereby declared.

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 Plenary 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 Vinueza, 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.