

# THE CONSTITUTION OF PANAMA AND THE PANDEMIC EMERGENCY PROTOCOLS

BY PUBLIO CORTÉS



I remember it perfectly, even though I was an elementary school kid. Ms. Gladys, the Principal of the Juan T. Del Busto School of Chitré, appeared at the ceremony to salute the flag with an officer of the Fire Department from the “Eustacio Chichaco” fire station, both in a very formal uniform and they announced that there would be “fire drills” at the school. At least that is the name I remember. The underlying message was that we had to be cautious and anticipate what we should all do in case - *“God forbid!”*- there was a fire in the school.

During the week the instructions were given and they surprised us, from time to time, with a special bell that signified the call before which each pavilion had to follow a route, in single file, seeking to leave the facilities to be located in the outdoor courtyards, where there would be better air circulation and ease for eventual rescue. The good thing about it is that, except for a nearby grassland, *“God has covered us with his mantle”*; and there was never a fire in the school.

Protocols of this type are repeated everywhere under different concepts. In restaurants, planes, supermarkets, in buildings with their “Emergency Exits”. There is also the case of cities where the recurrence of natural events is already known.



Take the case of New Orleans in Louisiana, United States, where it is common to see in St. Charles Ave., signs indicating the radio station to tune into, to receive instructions in the event of a disaster and, depending on the sector of the city, in theory residents know in advance if they have to evacuate towards Houston on I-10 or if you have to take another highway to leave the city, in a certain order. Come on, not always everything works well, but there are protocols.

In the world of maritime navigation, military and commercial, this issue is fundamental. In Spanish, the preventive protocol to handle extreme risk situations or prepare the ship for a mission is called ZAFARRANCHO. The Dictionary of the RAE defines it as follows:

*"1. m. Sea. Action and effect of clearing a part of the boat, to leave it ready for a certain task. Combat emergency protocol, cleaning."*

Now, for the purposes of these comments, I like it more, for its simplicity, the definition of the NAUTICAL DICTIONARY that can be consulted on the internet:

*"A joint effort made by the crew to overcome urgent situations, such as an emergency protocol for collision, fire, etc."<sup>[1]</sup>*

These are, therefore, actions that are anticipated to leave everything in a reasonably foreseeable condition to overcome risky situations that can always arise or also to meet specific goals, as a team. In a fire emergency protocol, each crew member must know in advance the extraordinary role they must play to control the fire and save the ship and lives. In a cleaning protocol it is similar: each crew member knows in advance what to do so that the vessel can be as clean as possible, etc.

Now, what do the "fire drills" of schools of Chitré, the evacuation protocols of the restaurants and the emergency protocol of a vessel during a collision have to do with the Constitution and the COVID-19 pandemic? In my opinion they have everything to do with it. I explain myself below:

Just as cities would like to live without being affected by a hurricane, schools would like to continue their work without a fire ever putting children in danger or an ocean-going vessel would like to sail the seas assuming it would never have a collision with another ship, States would also want to rule out from their lives the possibility that a

[1] <http://www.nautical-dictionary.com/zafarrancho#top>

foreign State attacked them militarily or that a criminal organization could cause an internal commotion or that an unforeseen problem caused the shortage of basic food of the diet of most of the population (Can you imagine Mexico without tortillas for tacos or Panama without rice for 6 months?).

However, despite the logical wish that human organizations could flow without exceptional situations that affected their development, historical experience illustrates the reality that the world is not like this. For this reason, in the same way that some cities have preventive plans against disasters caused by hurricanes, schools prepare for eventual fires and the crew of a ship knows what to do in the event of a collision, the States also provide well in advance the rules that should govern the internal political and administrative order in the event of a war, criminal terrorist attacks or an earthquake.

Although not all States handle it in the same way, it is common to find that political organizations, presumably after a pluralistic reflection, establish rules in constitutions and laws to handle these exceptional cases. Those rules apply to the situation we are experiencing due to the COVID-19 pandemic.

The idea of this article is to analyze the rules of Panama, but previously, as a reference, we will give a slight review of the treatment of this issue, at the constitutional and legal level, in our neighbors: Costa Rica and Colombia and also in Spain, countries with which



Panama has a cultural and legal affinity, in addition to enjoying constitutional democratic systems of respect.

### **Costa Rica**

Regarding Costa Rica, I rely on a publication of the CONSORTIUM LEGAL law firm, with Central American presence.<sup>[2]</sup> My understanding of the matter is shared as a reference, subject to the best and most authoritative judgment of the Costa Rican Attorneys.

First, it is very illustrative for me to transcribe here two quotes from decisions of the Supreme Court of Justice of Costa Rica, cited in the abovementioned paper, which are valid for everyone, including Panama. The first defines the "right of exception" as follows:

[2] COVID-19 and a state of exception or necessity. What constitutional guarantees could be suspended? Publication of CONSORTIUM LEGAL, available at <https://consortiumlegal.com/covid-19-y-estado-de-excepcion-o-necesidad-cuales-garantias-constitucionales-podrian-ser-suspendidas/>



"the set of extraordinary measures provided for in the constitutional texts so that the legal system itself can face an emergency situation that can result in a crisis of the State ..." [3]

In the second one it is commented when the situation of necessity or urgency occurs, which is the cause of the application of the legal rules of exception, as follows:

"The notion of a state of necessity and urgency only occurs before the production of facts (sic) that cannot be solved through the exercise of the ordinary administrative procedures ..." [4]

In the system of the Costa Rican Constitution of 1949, duly amended, [5] the extraordinary situation of the "right of exception" is closely related to the "fundamental guarantees" that the Constitution establishes. This is important, because the state of necessity produces a situation where many times the temporary suspension of certain fundamental rights of the citizen that the Constitution itself contemplates is justified, as an extreme instrument to be able to face and overcome the crisis.

Such constitutional guarantees are: Freedom of transit; Freedom [inviolability] of domicile; Inviolability of documents and oral communications; Freedom of assembly; Right of Autonomy of the Will; Freedom of thought, expression and information; Freedom of access to administrative

departments for the purpose of obtaining information on matters of public interest; Right not to be detained without proven evidence of having committed a crime and without a warrant. All these rights are complemented by the provisions of the Pact of San José (American Convention on Human Rights).

In Costa Rica, faced with the emergence of a situation of necessity for the State, the reaction has variants, depending on whether or not the Legislative Assembly is in recess:

If the Legislative Assembly is in session:

It is up to the Assembly to recognize the emergency situation, called "*evident public necessity*", and the power to suspend individual rights and guarantees, by vote of 2/3. It can be for all or some rights and guarantees and for all or part of the territory. It will be for up to 30 days, during which the Executive Branch of the Government can take measures to address the situation but must be accountable to the Legislative Assembly.

If the Legislative Assembly is in recess:

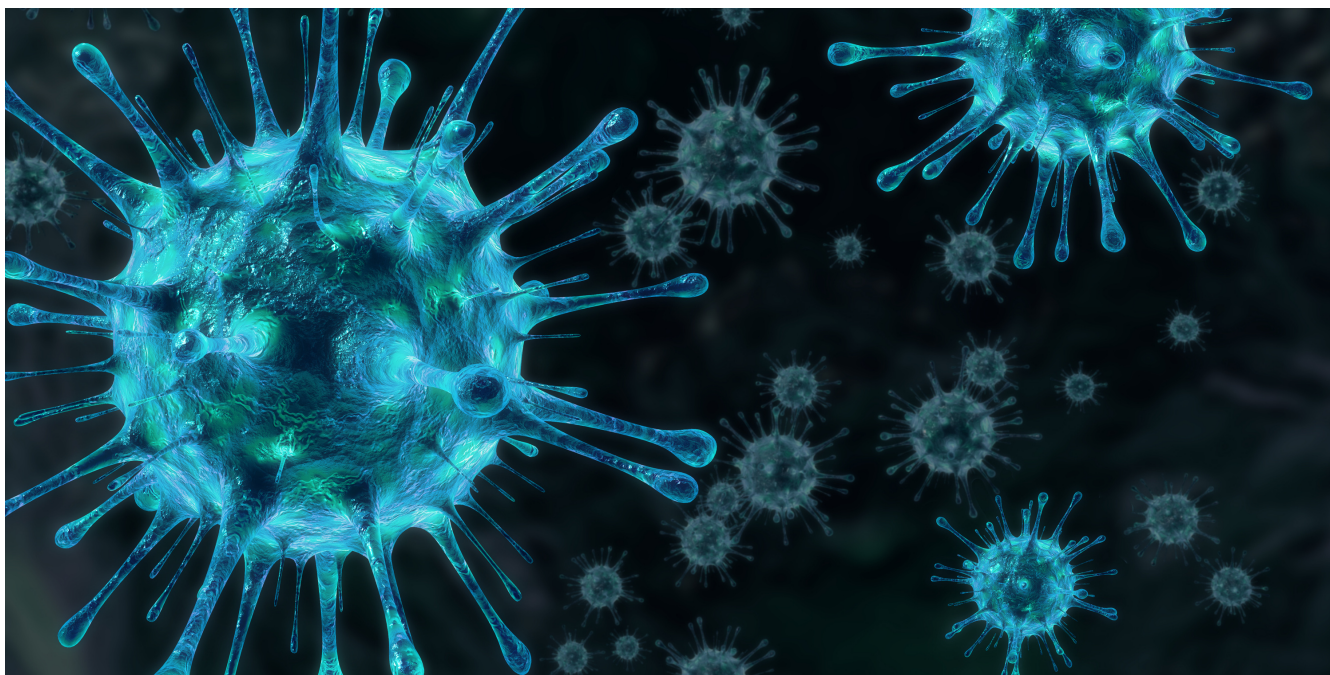
The foregoing corresponds to the Executive Branch but must immediately report to the Legislative Assembly. The decree of suspension of guarantees issued by the Executive causes that extraordinary sessions of the Legislative Assembly be called immediately to ratify or not that decree of suspension. Ratification requires a favorable vote of 2/3 of the members, if the Assembly

[3] Constitutional Chamber of the Supreme Court of the Republic of Costa Rica. Decision No. 4778-11

[4] Constitutional Chamber of the Supreme Court of the Republic of Costa Rica. Decision No 2001-1369.

[5] See the PDF text published by the Judicial Power of the Republic of Costa Rica at: [https://pj.poder-judicial.go.cr/images/documentos/normativa/Constitucion\\_Politica\\_Costa\\_Rica.pdf](https://pj.poder-judicial.go.cr/images/documentos/normativa/Constitucion_Politica_Costa_Rica.pdf)





fails to ratify, the constitutional guarantees are immediately restored. As long as the Assembly has not met, the Executive may govern by decree, but these decrees must be ratified by the Assembly. As can be seen, in Costa Rica no major differences are established between the assumptions that cause the "*evident public necessity*", therefore, everything indicates that what has been explained applies in the event of a pandemic.

Now, despite the clear constitutional framework of Costa Rica, apparently in the case of COVID 19, that route was not followed, constitutional rights and guarantees were not formally suspended with the participation of the Legislative Assembly, instead legislation for normal situations was applied, in sanitary and criminal matters and especially the "National Law of Emergencies and Risk Prevention".

In the neighboring country, there are points of view that question this procedure, for example, as has been expressed by the Costa Rican Professor of Constitutional Law and Expert in Administrative Law Luis Ortiz, partner of the Central American firm BLP LEGAL, who wrote an interesting opinion piece on the subject last August. [6]



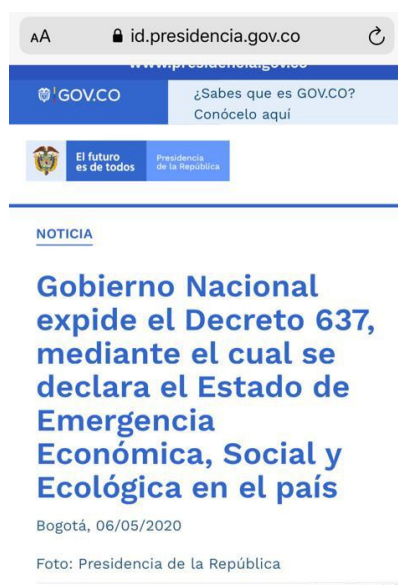
[6] Is the way the government has dealt with the COVID 19 pandemic legal? LA REPÚBLICA newspaper of San José, Costa Rica, August 3, 2020. Available at: <https://www.larepublica.net/noticia/es-legal-la-forma-en-que-el-gobierno-ha-atendido-la-pandemia-de-la-covid-19>

## Colombia

In the case of Colombia, we will make some comments based on the Political Constitution of 1991<sup>[7]</sup> and on Statutory Law 137 of 1994, *"By which states of exception are regulated in Colombia"*,<sup>[8]</sup> a Law from 26 years ago, from the time of President Gaviria. My understanding of the matter is shared as a reference, subject to the best and most authoritative judgment of the Attorneys of Colombia.

Using its characteristic detailed and even didactic wording, the Constitution of Colombia includes a Chapter 6, within Title VII of the "Executive Branch". This chapter includes within the generic concept of "States of Exception", three situations whose regulation is similar, but which differ from each other. Those three situations are:

- State of Foreign War
- State of Internal Commotion
- Commotion State of Emergency



As the issue of the pandemic is considered in the "State of Emergency", we are going to refer to that aspect only. Let us consider:

(1) It applies in those cases that do not fit into a State of Foreign War or Internal Commotion.

(2) They must be events that seriously and imminently threaten or disturb the economic, social, and ecological order or constitute public calamity.

(3) The President and his Ministers issue the Decree of State of Emergency, which can last up to 30 days at a time, but no more than 90 days in total for each calendar year.

(4) During this period, the Executive may govern by decree with force of Law, only in those matters directly related to the emergency, including tax matters on a temporary basis.

(5) In the decree, the President must establish the time that the State of Emergency will last and will summon Congress, if it is not in session, to meet in 10 days. If not summoned, Congress can also meet in its own right.

(6) Congress will analyze the report submitted by the Executive Branch on Emergency measures for up to 30 days, extendable, and will rule on the convenience and timeliness of the same.

(7) Emergency decrees in matters that are the initiative of the Executive Branch may be repealed, modified, or added by Congress within the following year. And when it comes to congressional initiative issues, the same can be done at all times.

[7] See text in PDF published by the Constitutional Court of the Republic of Colombia in: <https://www.corteconstitucional.gov.co/inicio/Constitucion%20politica%20de%20Colombia.pdf>

[8] See text in PDF published by the Administrative Department of the Public Function of the Government of the Republic of Colombia at: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=13966>

(8) The President and his Ministers are responsible in the event of decreeing the State of Emergency when it did not apply or for abuses committed during that period.

(9) It is forbidden to undermine the social rights of workers in a State of Emergency.

(10) Each decree issued in a State of Emergency must be sent by the Executive Branch, the next day, to the Constitutional Court for it to decide on their constitutionality. If they are not sent, the Constitutional Court takes control of it anyway to rule.

On the subject of the "State of Emergency" the Constitution of Colombia does not mention the suspension of Fundamental Rights. However, since the Constitution itself, in its article 152 (e), has a legal reserve clause, according to which the States of Exception can be regulated by Statutory Laws, it is necessary to look at Law 137 of 1994. In that Law there is a regulation that to my inexperienced eye sounds somewhat confusing and contradictory, although it clearly seeks to affect the fundamental guarantees as little as possible.

Indeed, if we analyze the "General Provisions", in the first place a categorical prohibition to the suspension of the Fundamental Guarantees is observed, as we see it in article 15 that says: *"In the States of Exception, according to the Constitution, it will not be possible... to suspend Human Rights and Fundamental Freedoms"*, which goes hand in hand with the emphasis placed in other provisions on

respect for international conventions, while exceptional measures are in force, especially the Pact of San José (American Convention on Human Rights).

However, there are other rules that seem to qualify that ban that seemed categorical. For example, article 5 says:

*"The limitations on rights may not be so burdensome that they imply the denial of human dignity, privacy, freedom of association, the right to work, the right to education, freedom of expression and other human rights and fundamental freedoms that cannot be suspended in any State of Exception ... Neither may the judicial guarantees essential for the protection of such rights be suspended ..."*.

In other words, there may be limitations to rights, only that they are not so burdensome. Article 7 provides:

*"...*

*When a fundamental right or freedom can be restricted or its exercise regulated by legislative decrees of States of Exception, these cannot affect the essential nucleus of such rights and freedoms."*

According to this rule, it is possible to restrict a fundamental freedom, but without affecting its essence.

Finally, article 8 says:

*"Exception decrees must indicate the reasons for which each of the limitations to constitutional rights is imposed in such a way as to demonstrate the connection with the causes of the disturbance and the*



*reasons why they are necessary."*

In other words, it seems that the applicable Statutory Law for the case in Colombia, in summary, says something like this: do your best not to affect the guarantees during States of Exception; and in case you have to affect them, you must do so carefully. They cannot be excessive, they cannot affect the essence of the rights, they must be motivated, they must have a very precise causal relationship, etc.



Likewise, as mentioned above, everything that the Executive Branch does through these decrees is not only subject to the framework of the Constitution and the law, but the verification of respect for that framework is also subject to the control of Congress and the Constitutional Court.

### Spain

In the case of Spain, we will comment on the 1978 Constitution <sup>[9]</sup> and on Organic Law 4/1981, *"On States of Alarm, Exception, and Siege"*, <sup>[10]</sup> a law that dates back 39 years, to the time when Calvo-Sotelo was President of the Government. My understanding of the matter is shared as a reference, subject to the best and most authoritative judgment of the lawyers in Spain.

The Spanish Constitution includes an article under Title V *"On the relations between the Government and the General Courts [the Congress]"*, which establishes the parameters on *"the states of alarm, of exception, and of siege"*.

The first thing it establishes is a legal reserve clause, according to which *"an organic law will regulate the states of alarm, of exception and of siege, and the corresponding competences and limitations"*. In addition, the Constitution establishes some other parameters, among them the one that determines the existence of 3 different types of situations, but does not define them:

<sup>[9]</sup> We have used the text published in the Official State Bulletin, through the following link: <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229>

<sup>[10]</sup> We have used the text published in the Official State Bulletin, through the following link: <https://www.boe.es/buscar/act.php?id=BOE-A-1981-12774>



## Estado de Alarma

*El Estado de Alarma concluyó el 21 de junio de 2020.*

### Cronología del Estado de Alarma



WWW.LAMONCLOA.GOB.ES

- State of Alarm
- State of Exception
- State of Siege

However, the issue of the pandemic is contemplated in the "State of Alarm", we are going to refer to that aspect, only, based on the parameters of the Constitution and Organic Law 4/1981:

- (1) The State of Alarm is declared by the Government, that is, the President of the Government and his Council of Ministers, for 15 days maximum initially.
- (2) The Congress of Deputies is immediately informed, and the period cannot be extended without their authorization.
- (3) The decree must indicate the territorial scope of the measure.
- (4) Congress cannot be dissolved while there is a State of Alarm and, in case of not being in session, an assembly must

be convened.

(5) In the event of a State of Alarm occurring when Congress is already dissolved or its mandate has expired, the above powers shall be assumed by the Permanent Deputation.

(6) In matters of State of Alarm, article 55 of the Constitution does not provide for the possibility of suspension of rights and freedoms. However, this is possible in cases of states of exception and of siege, where rights can be suspended such as those related to freedom: not to be arrested except by a competent authority, a detainee's right to an attorney and Habeas Corpus; Inviolability of domicile; secrecy of private communications; freedom of transit and the right to strike, among others.

As for the State of Alarm, the Organic Law 4/1981 establishes the following parameters among others:

- (1) Applies to sanitary crises, such as epidemics and situations of severe contamination.
- (2) If the Congress of Deputies grants the extension, it may set the scope and conditions in force during the extension.
- (3) The government will be the authority during the State of Alarm but must be accountable to the Congress of Deputies regarding the measures it applies.
- (4) In the State of Alarm, all security bodies shall be under the command of the competent authority.
- (5) Measures may be agreed on to limit the number of persons or vehicles that may be present at given times and places, or to make them subject to compliance of certain requirements; to



do temporary inspections of all kinds of assets and to impose mandatory personal duties.

(6) Intervene and temporarily occupy industries, farms or premises of any kind, with the exception of private homes; and to ration the use of services or the consumption of basic necessities, allowing for measures to be taken to ensure the supplying of markets and the functioning of services.

(7) The anticipated measures may be implemented to combat infectious diseases.

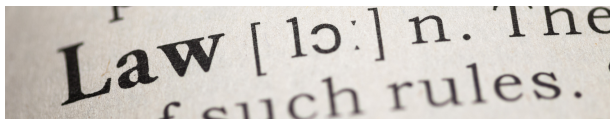
Although in Spain there is no generic suspension of Fundamental Rights in case of a State of Alarm, it is a fact that some of those rights can be affected, according to Organic Law 4/1981, for example: the freedom of transit, property, freedom of trade. However, as the same law states: *"The measures to be adopted...as well as the duration..., will in any case be those strictly indispensable to ensure the reestablishment of normality. Its application will be made in a proportionate way according to the circumstances"*.

### **Useful similarities for the Panamanian case**

There are multiple differences between the constitutional systems of the mentioned countries, for example, Costa Rica has a unicameral Legislative Body while Colombia and Spain have two chambers, or also that, while Spain is a Parliamentary Constitutional Monarchy, Colombia and Costa Rica have Presidential models.







In the same way we have seen that there are many differences in the handling of what the Supreme Court of Costa Rica aptly calls Exception Law.

However, there are some similar elements in the three reference cases that are important to highlight, namely:

(1) Whether the Legislative Branch is in recess or not, in all three systems there is a tendency to make it absolutely clear that the situation of urgency does NOT allow for the Executive Branch to govern in an absolute way.

(2) There is clearly a guideline that seeks to emphasize that in these exceptional situations, the "checks and balances" systems which is a pillar of liberal representative democracy and the State of Law is still perfectly active.

(3) In representative democracy, the Legislative Branch is the closest thing to the people governing themselves. That is why so much emphasis is placed on the control and supervision that this body must exercise over the Executive in State emergency situations.

(4) In the revised systems the suspension of Fundamental Rights is not entire: it can be partial for some rights or also by sectors of the territory. The tendency is to limit the suspension as much as possible.

(5) The measures taken must be directly related to the cause of the problem and the actions to return to normalcy.

## Panama

In Panama we only have regulations of constitutional rank. There is no special law for the cases that the Constitution calls with a single name: "State of Urgency".

The 1972 Constitution of Panama, substantially reformed in 1983 and with other subsequent reforms, has a TITLE III called "*Individual and Social Rights and Duties*". Within that TITLE there is a Chapter 1 called "Fundamental Guarantees". A large number of individual rights are regulated in this chapter. The articles range from number 17 to 55.

This structuring of the legislation is important for two reasons. The first is that NOT ALL fundamental guarantees can be affected when a State of Urgency is declared. The only ones that can be affected, and not always, are the following:

(1) Rights related to the protection of Physical Freedom: a person can only be deprived of liberty by order of a competent authority, there is no imprisonment for debt, the right to be informed of the charges against one, presumption of innocence, the right of a detainee to be assisted by a Lawyer, the action of Habeas Corpus against illegal detentions. (Articles 21, 22 and 23)

(2) Inviolability of domicile, although it is clarified that public health servants can make inspections after identifying themselves. (Article 26).

(3) Freedom of transit and

establishment of domicile. (Article 27).

(4) Inviolability of correspondence and private communications. (Article 29).

(5) Freedom of expression without prior censorship. (Article 37).

(6) Freedom of assembly for legal purposes. (Article 38)

(7) Respect for private property. (Article 47).

There are many fundamental guarantees that can never be affected, not even in a State of Urgency, among them, the following:

(1) There shall be no exemptions nor privileges nor discrimination on grounds of race, birth, disability, social class, gender, religion, or political ideas. (Article 19)

(2) Equality before the Law for Panamanians and foreigners, although the same provision says that foreigners may be subordinated to special conditions or denied the practice of certain activities for health reasons. (Article 20).

(3) Non-extradition of nationals. Non-extradition of foreigners for political crimes. (Article 24)

(4) The right not to testify against oneself or their spouse or relatives within the fourth degree of consanguinity or second of affinity. (Article 25).

(5) Prohibition of measures harmful to

the physical, mental, or moral integrity of detainees. (Article 28).

(6) There is no death penalty, expatriation, or seizure of property. (Article 30).

(7) There is no penalty without a crime previously established in the Law, Due Process. (Articles 31 and 32).

(8) In short, many more guarantees remain without the possibility of being affected by the "State of Urgency". In fact, the rest of the Constitution is unalterable.

The other reason that makes it important to know the structuring of the legislation in the Constitution is the fact that, at the end of the chapter on Fundamental Guarantees, the Political Constitution of Panama includes the following article:

*"ARTICLE 55. In the event of foreign war or internal disruption threatening peace and public order, the entire Republic or part of it may be declared in a state of urgency and the effects of articles 21, 22, 23, 26, 27, 29, 37, 38 and 47 of the Constitution may be temporarily suspended partially or entirely. The State of Urgency and the suspension of the effects of the aforementioned constitutional provisions shall be declared by the Executive Branch by means of a decree agreed upon by the Cabinet Council. The Legislative Branch, in its own right or at the request of the President of the Republic, shall take cognizance of the declaration of the state referred to if it is prolonged for more than ten days and shall confirm or revoke the decisions adopted by the Cabinet Council,*

*regarding the state of urgency, entirely or partially.*

*When the cause for the declaration of the state of urgency ends, the Legislative Branch will lift the state of urgency if it is in session, or, if it is not, the Cabinet Council shall."*

How should this provision be applied to the pandemic matter in Panama?

In my opinion, in the following way:

(1) Since this is evidently not a war, it is clearly an *"internal disruption that threatens peace and public order"*. In Panama, we have no specific Constitutional or Legal definition that excludes the concept of "Internal Disruption", therefore, the generic meaning of the term applies. In this sense, it seems to us that we should rely on the RAE's Dictionary, which defines DISRUPTION, as follows: *"the act and effect of changing, to alter the order and agreement, or something's or someone's tranquility and peacefulness"*. The COVID-19 pandemic has undoubtedly disrupted the order and peacefulness of the Panamanian society since day one.

(2) The disruption that the pandemic has caused internally in Panama, clearly threatened peace and public order at the beginning and continues to threaten it today: There have been problems regarding security, increased crime, social uncertainty about the future, with an economy facing a double shock, a population with serious financial needs, the possibilities of businesses being looted has increased greatly, and not just the ones who sell food. As in all third world countries, the possibility of disorder is a

threat at this time, and the threat has existed from the very beginning.

(3) Any existing legislation of inferior hierarchy, such as the Health Code or the Public Contracting Law must be interpreted in accordance with the Political Constitution. Therefore, from the moment a high-magnitude health situation such as the COVID-19 pandemic reached the levels of generating an *"internal disruption posing as a threat to peace and public order"*, it had to be subsumed in Article 55 of the Political Constitution, because it is the provision of highest rank. Statutory regulations are not alternatives to the Constitution meaning they must be part of a single system: there are not two Constitutions in Panama. If the situation had not reached the level of causing the state of *"internal disruption"*, then only the legal framework of the administrative normality applied. However, the case of COVID-19 is clearly an *"internal disruption that threatens peace and public order"*, and therefore, upon reaching that level it activates the "state of necessity", for which it deserves and should be handled according to the Constitution. Only under this scheme could certain Fundamental Guarantees be affected.

(4) The Executive Body is authorized to declare a "State of Urgency" by Cabinet Decree.

(5) The Declaration of the "State of Urgency" must include a reasoned justification and a statement of which Fundamental Guarantees have been affected whether entirely or partially.



(6) The Declaration of the "State of Urgency" must also contain a reasoned justification and an enunciation of which parts of the territory have been affected by the state of exception.

(7) The Declaration of the "State of Urgency" made by the Executive Branch in Panama is only valid for ten (10) days.

(8) The decision of extending the "State of Urgency" beyond ten (10) days corresponds to the National Assembly, which must immediately take cognizance of the matter, whether it is in session or not. It must convene in any case, whether by convocation of the President of the Republic or by its own right. As the Constitution does not require a qualified majority, it must be understood that the simple majority applies for the vote.

(9) In addition to granting the declaration of "State of Urgency," the Legislative Body has to express whether it confirms or revokes the measures adopted by the Cabinet Council to address the exceptional situation, whether entirely or partially, at the same session.

(10) The termination of the "State of Urgency" is incumbent on the National Assembly if it is in session. If it is not, the Cabinet Council may do so.

At this point it is very important to emphasize that the Panamanian Constitution follows the trend of placing the actions of the Executive Body under the approval and tutelage of the Legislative Body.

Our constitutional provision does not have a legal reserve clause; therefore, it is a directly applicable law.

In Panama, the actions on "State of Urgency" are subject to constitutional control, by means of the activation of said control, through a lawsuit filed by any person, through a Lawyer.

### **Has Panama's Pandemic Emergency Protocol Fulfilled the Political Constitution?**

I don't think so. I am not aware of the existence of any Cabinet Decree that declares a "State of Urgency", indicating which constitutional guarantees have been suspended in a reasoned way, whether entirely or partially, nor for how long, nor logically explaining whether it applies to the entire territory or a part of it.

Furthermore, given that the previous Cabinet Decree does not exist, there is also no Law, Ruling or administrative act of the National Assembly, by which said State Body pronounces itself on the extension of said "State of Urgency" beyond ten (10) days or that ratifies, modifies or revokes, the measures taken by the Executive.

In Panama, the Executive Branch and the vast majority of the National Assembly is in the hands of the same political party. It is at least curious to ask yourself the reason for this approach.

## **Final Comments**

"Rule of Law" means that the actions of the Government do not depend on the absolute will of the rulers, but that their actions are framed in the previously established rules that we all know, both rulers and ruled.

The rules of the pandemic emergency protocol in Panama are already established in the Constitution. They had to be followed. The rules made it possible to confront the exceptional state. No one was going to oppose the application of the Constitution with the goal of working as a team to overcome this challenge that is affecting everyone.

The delicate thing about this precedent is that it creates a malpractice that would allow one to assume that, in situations of panic, the State of Law does not matter. That is dangerous and a very bad habit for any democratic society.

It should really be the opposite: the lesson for all towards the future should be to always bear in mind that the democratic system and freedom must be looked after at all times, when there is panic we need to be even more precise in complying with the rules that submit the Public Power to Law, because panic easily leads to institutional disorder.

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