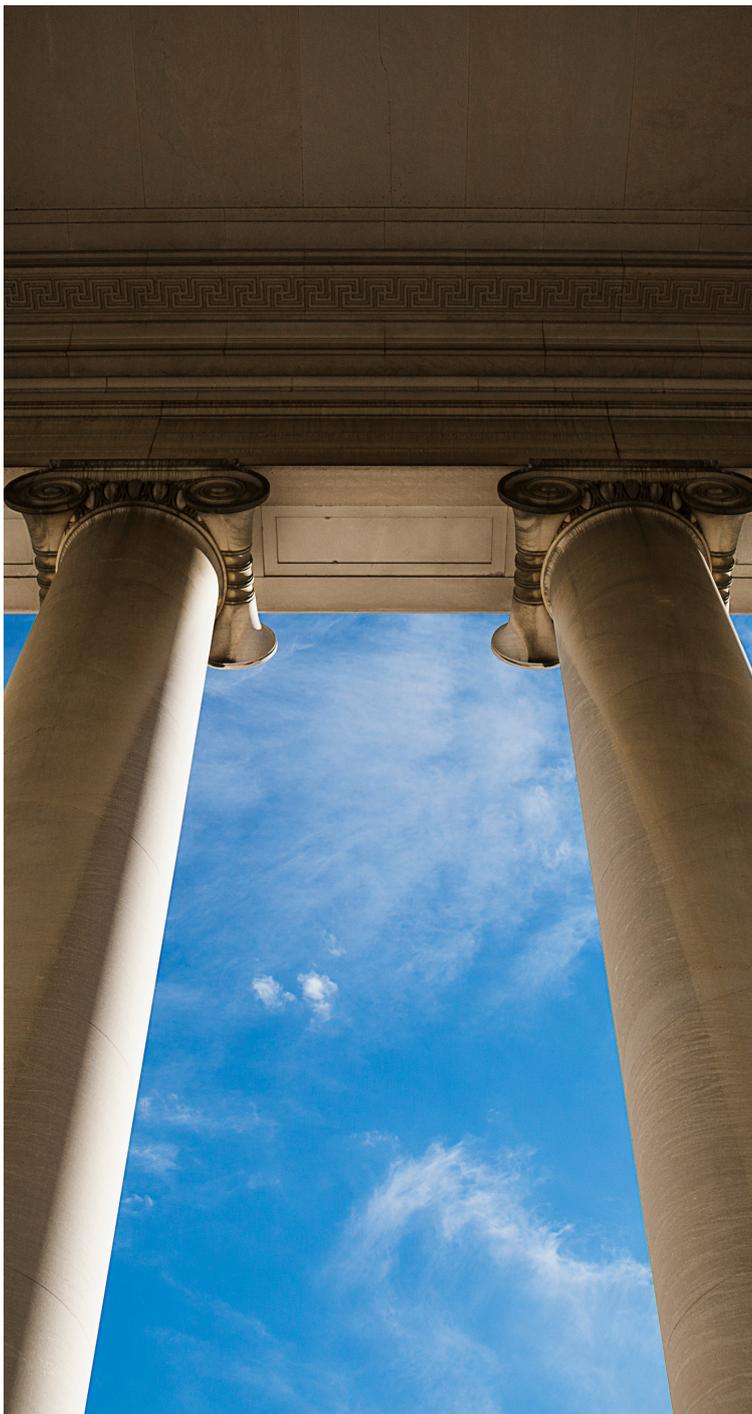


# THE COVID-19 CRISIS AND CIVIL LIABILITY OF THE STATE IN PANAMA

BY PUBLIO CORTÉS



The debate has already been raised internationally for months: Can the State be sued for civil liability arising from the decisions and handling of the pandemic?

In the United States, there have been lawsuits to advance the parole of criminally convicted prisoners who claim that, if they remain locked up, with the abysmal health conditions of the prisons, they could become infected. One wonders: if a detainee dies from COVID-19, could the State be responsible? In the United States too, nurses in New York at one point sued for the provision of masks, gloves, and protective equipment, raising another question: what if the State fails to provide sufficient equipment to health workers? Will the State be responsible? In the United States, too, lawsuits have already been filed for financial losses resulting from containment or quarantine orders.

In Colombia, the Director of the National Agency of Legal Defense of the State (ANDJE) declared since May that *"the measures taken by COVID-19 will bring a wave of lawsuits against the Nation"* and explained that since

before that date they were already preparing their 4,200 lawyers with information and the supporting jurisprudence to defend the State.

In Spain, also on May, the relatives of 3,260 people who died from COVID-19 filed a lawsuit against the President of the Government and his Ministers for allegedly having allowed, by action or omission, the extension of the pandemic that killed their relatives.

In short, all over the world the matter has already begun, and we can reasonably say that it will continue, which is why it is worth analyzing what the legal framework of the issue is in Panama.

## Las demandas relacionadas con la covid-19 se propagan como el virus por EEUU



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4 min

Washington (AFP)

Las aplicaciones para videoconferencias y los cursos en línea han florecido durante la pandemia de covid-19, pero también otros asuntos más polémicos: las demandas.

Más de 1.300 quejas relacionadas con el coronavirus se han presentado ante las cortes de Estados Unidos, según el recuento diario del bufete de abogados Hunton Andrews Kurth.

"La covid ha dividido a Estados Unidos y ha tenido vastas implicaciones políticas", dijo a AFP Lawrence Gostin, un profesor de derecho de la salud pública en la Universidad de Georgetown.



## What does the Law of Panama say?

There are regulations in the Judicial Code and the Civil Code that, analyzed together, give rise to the statement that in Panama there is a generic rule by which the State and other public entities may be sued for compensation for the malfunctioning of public services assigned to them, which includes all public services, from security, health, administration of justice, education, firefighters, in short, everything handled by the State. There is no restricted definition of what is meant by "public service".

There is also a legal basis for cases in which compensation is sought for damages that are the result of crimes committed by public officials in the exercise of their duties, where there is a prior definitive decision, as well as when they are the result of acts previously declared illegal, by means of a firm judgment.

This is not a singular criterion, but rather the interpretation established by the Supreme Court of Justice over

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POR DELITOS DE HOMICIDIO POR IMPRUDENCIA

### Familiares de 3.260 fallecidos por covid se querellan contra Sánchez y sus ministros

La demanda se presenta ante el Supremo contra el Consejo de Ministros por "haber permitido por acción o por omisión" la extensión de la pandemia que ha acabado con la vida de sus allegados

JOSE MARI ALONSO

TAGS Coronavirus Tribunal Supremo Pandemia Pedir

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ECONOMÍA

### 'Las medidas por la covid-19 traerán ola de demandas a la Nación'

Camilo Gómez, director de la ANDJE, dice que se han capacitado a 4.200 defensores, quienes estarán listos para atender las querrelas contra el Estado.

En las medidas del Ejecutivo primó el derecho fundamental de la protección a la vida", Camilo Gómez, director de la Andje.

ANDJE

PR: ALFONSO LÓPEZ SUÁREZ MAYO 07 DE 2020 - 10:00 PM.

decades through extensive case-law.

A global reading of much of that Supreme Court case-law shows that there is a wide variety of outcomes to people's lawsuits in this area.

There are many cases where the lawsuit is admitted and the decision on the merits acquits the State, and there are also a representative number of cases where the lawsuit is admitted, and the State is ultimately condemned. Likewise, there are many cases that are not admitted and another group where the action is declared untimely, mainly due to the statute of limitations.

We will now quickly review some rulings of condemnation.

### **Some rulings against the State in Panama for the malfunctioning of public services**

In 2002 the Supreme Court condemned the Panamanian Maritime Authority (AMP), an autonomous entity of the State and the Panamanian State, to compensate the owner of a fishing vessel that was totally lost as a result of an accidental fire that could have been controlled, but which proved impossible because the port where it was docked, administered by the State, lacked equipment, water and other resources to put out small fires, contrary to health and safety regulations.

In 2004, the Supreme Court once again condemned the State, through the AMP. The background of the case is a proceeding against a small vessel that was brought before the maritime

jurisdiction of Panama. As part of this process, the plaintiff succeeded in having the vessel arrested and the Bailiff of the Court placed it in the custody of a port administrator of the AMP. At the end of the process, the plaintiff wins and is awarded the vessel, for its credit. Someone takes the vessel without authorization from the new owner and without official permission to sail. The State is ordered to compensate the new owner for the loss of the vessel for failure to comply with its custodial duty.

In 2006, the State, through the Ministry of Government and Justice and the National Police, was sentenced to compensate the plaintiff for damages resulting from a traffic accident in which police officers were responsible, according to a Traffic Judge.

For 2007 there are at least two sentences. In the first one, the State is condemned, through the Public Registry, to compensate the plaintiff for an error in a registration in the Property Registry, which prevented the plaintiff from asserting a right recognized by a court, through a firm sentence. In the second one, the State, through the Ministry of Government and Justice and the National Police, is condemned to pay the damages caused to a minor by a shot fired by a police officer, causing him a wound in his heel, within a "social preventive operation".

In 2008 we found another sentence against the State, through the Ministry of Government and Justice and the National Police, for damages (injuries) caused by a police officer who was

driving an official police car involved in an automobile accident, as a result of which one person died and others were injured. The police officer was previously condemned by a criminal court for the crime of negligent homicide.

Under the same logic of the previous sentence, in 2009 there is another sentence of the Supreme Court where the State, through the Institute of National Aqueducts and Sewerage (IDAAN), is condemned to pay compensation to two people for the injuries they suffered as a result of a traffic accident where the driver was on official IDAAN mission and was previously criminally convicted for negligent injuries.

Now we move on to 2014 where the Supreme Court condemns the State, through the National Charity Lottery (LNB), recognizing compensation to holders of Lottery Books granted by the LNB, as a consequence of the fact that the entity withdrew the concession from them for unjustified reasons and orally.

In 2015 we have a case of medical malpractice where the criminal justice condemns in a firm sentence a doctor who works in a hospital of the Social Security System (CSS) for negligent homicide, later, upon complaint by the affected parties, the Supreme Court condemns the State, through the CSS, to pay compensation.

In 2016 we have two sentences. In the first one, the Supreme Court condemned the State, through the Patronage of the Santo Tomás Hospital,



to compensate the relatives of a minor for all the surgical complications and finally the death of that person, during a period of approximately two months that was treated in that hospital. The Court found that there was negligence in the provision of public health service. In the second sentence, the State was condemned, through the Ministry of Education, to compensate the parents of a minor who died because a wall fell on him in the public school where he was during school hours. The Court found that there was malpractice in the provision of public education.

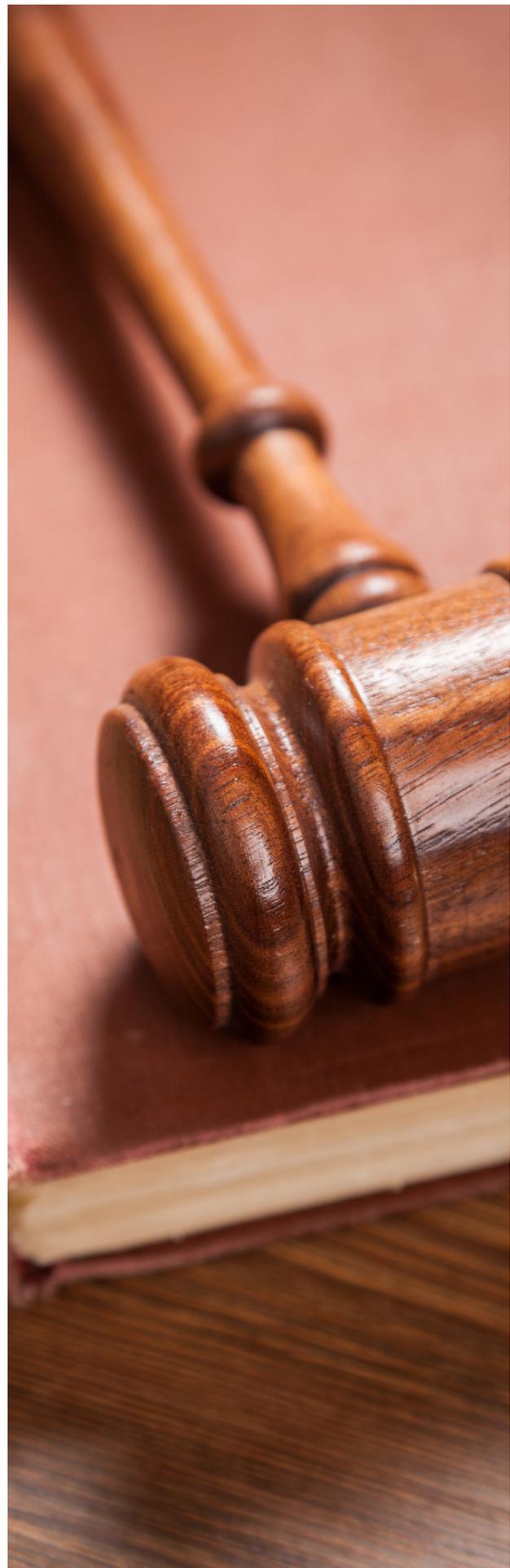
Finally, in 2018 we have two sentences. In the first one, the State is condemned, through the Ministry of Housing and Territorial Planning, to compensate an illegally dismissed public official, having previously been sentenced to a final judgment declaring the removal as illegal. For the second case, the State was sentenced, through the University of Panama, to pay compensation to a university professor who was kept apart from his post for three years, despite the fact that the administrative decision had been first suspended and then revoked by an Action for Protection of

Constitutional Guarantees that reached second level of judicial review, but was not complied with by the administrative authorities.

There are other rulings, but these examples are sufficient to illustrate the overall point: it is a fact that in Panama the State and public institutions can be sued and sentenced to pay damages for the malfunctioning of public services. It is also possible to sue and obtain a sentence against the State to compensate for damages when there are firm decisions revoking administrative acts or declaring public officials criminally responsible, when the acts occur in the exercise of their duties.

**How long does the claimant have to act against the State?**

The general rule is one (1) year, counted from the time the aggrieved party became aware of it. However, this general rule has its nuances and is an issue to be looked at carefully, because it depends on the type of case. It is not the same when seeking direct compensation from the State as when the source of the compensation is the product of a crime or an illegal act that requires a prior sentence.



## **Final Comments**

The general legal framework outlined is the same as that which would apply to any person, national or foreign, who believes that in Panama the State has caused him or her damages as a result of the decisions and management of the COVID-19 Pandemic. The prospect of success depends on the legal approach to each case, the evidence of potentially negligent conduct, the significant link to the damage, and the amount of damage. Nothing is cast in stone, either for or against the claimant.

In any case, it is important that both the State and potential claimants against the State for damages related to the handling of the COVID-19 pandemic bear in mind that the first paragraph of Article 17 and Article 18 of the Political Constitution of Panama are not patriotic poetic proclamations, but rather are legal norms of rigorous direct application, which will probably give a lot to talk about in the coming months.

These norms of constitutional rank literally state the following:

"ARTICLE 17. The authorities of the Republic are established to protect the life, honor, and property of nationals wherever they may be and of foreigners under their jurisdiction; to ensure the effectiveness of individual and social rights and duties, and to comply with and enforce the Constitution and the law.  
... .."

"ARTICLE 18. Individuals are only liable to the authorities for violations of the Constitution or the law. Public servants are liable for the same reasons and for overstepping their authority or for omission in the exercise of their duties."

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