

Decision C-004/92

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Topics:

State of emergency; scope of the Constitutional Court's jurisdiction on social emergency's motivation.

Piece of legislation subject to analysis:

Decree 333, dated February 24th, 1992 "declaring the state of social emergency", due to the disturbances created among public servants 'in particular by the lack of timely wage's rise, which threatened to cause serious trouble affecting public administration, and seriously disrupt the social order of the Nation'."

CONSIDERATIONS OF THE COURT

Legal problem:

¿Has the Constitutional Court the power to exercise judicial review of legislative decrees declaring states of emergency? And if so, should that control be limited to the procedural issues only, or should it also touch on the substantial content of such measures?

Development:

After the issuance of the Constitution of 1991, this was the first decision by which the Constitutional Court ruled about whether a decree declaring the state of emergency was according to the Constitution, for it is known that prior to July 1991, the judicial control of those decrees was a matter assigned to the Supreme Court of Justice¹. This circumstance is particularly relevant, since the Constitutional Court changed the rule formerly applied by the Supreme Court, which repeatedly assumed that its review was limited to the formal aspects of the declaration of exceptional states only; conversely, the Constitutional Court decided that its control should cover any kind of matter, including the material validity of such declaration with respect to the Constitution.

In this case the Court, explaining the primacy of substantive law, highlighted that the Constitution (Article 241, paragraph 7°) expressly assigned the Constitutional Court with the responsibility to keep and protect the integrity and supremacy of the Constitution. It also explained that such duty could not be fulfilled if this Court didn't have the power to fully review legislative decrees issued by the Executive Branch and related to any state of emergency, or if the control were limited to purely formal aspects. This Court pointed out that there are not constitutional distinctions between background checks and material aspects; therefore, neither the judge nor the interpreter should draw such differences.

This ruling also referred to the spirit that characterizes the new Constitution of 1991, stressing that according to it the states of emergency should strictly result from "abnormalities" in the social, political, economic or environmental fields, which was said, was defined by the Constitution's authors as extraordinary changes of what is considered to be "normal".

The Court also noted that the existence of states of exception does not undermine the Rule of Law, nor opens a door to abuse by the authorities, as it conducted an extensive analysis of the various controls, limitations and restrictions imposed by

¹ Which according to the new Constitution issued in 1991 is still the highest court of the Nation in all civil, criminal and labor law issues, but is no longer competent in constitutional matters.

the Constitution on the President's discretionary powers to cope with emergency situations.

The Court developed what it considered to be an objective requirement for the declaration of a state of social emergency, explaining that such concept is not definable at the abstract level; therefore it should be looked for in each specific case. Hence, there are not predetermined limitations that prevent the President from declaring a state of social emergency, and it is the Constitutional Court who must determine whether the motivation of each declaration actually corresponds to real circumstances of emergency.

Decision:

Decree 333 of 1992 was declared constitutional.

Dissenting vote:

Justice Ciro Angarita Barón expressed his dissenting vote, arguing that *"the deterioration of real wages, which is understood as the event giving rise to labor unrest can not be regarded as one of supervening nature, since it was not unpredictable or suddenly appeared"*. He also noted that ... *"there was not a crisis in society, but a crisis in government"*, which is not the situation the Executive Branch is supposed to deal with through the social emergency powers.

On these grounds he also concluded that allowing the President to exercise in such situations the exceptional powers resulting from the declaration of emergency means transforming such constitutional provision in a tool readily available to play politics.