

June 11, 2020

## Summary of accumulated unconstitutionality 21-2020

On June 8, 2020, the Constitutional Chamber of the Supreme Court of Justice of El Salvador, has declared the unconstitutionality of the executive and legislative decrees and a ministerial resolution regulating the State of Emergency and the sanitary measures decreed to prevent the spread of COVID-19.

Although the unconstitutionality processes were directed against Legislative Decree No. 594, the Chamber extended its analysis and study to Legislative Decree No. 611, because it considers it as a replica of the previous one, and in the same way studies the Executive Decrees that developed said Legislative Decrees (Executive Decrees No. 5, No. 12, No. 18), Legislative Decree No. 639, Executive Decrees No. 14, No. 19, N.º 21, No. 22, No. 24, No. 25, No. 26 and No. 29 and Ministerial Resolution No. 101, all of which regulated restrictions on fundamental rights, including the freedom of transit, and exceptionally allowed to do so.

The Legislative Decrees studied were declared unconstitutional because in no case were the technical reasons and legal criteria for the restriction of the fundamental rights contained in the documented or accredited, and an ideal way of how the right to health of the general population due to the COVID-19 pandemic.

Regarding the Executive Decrees and the Ministerial Resolution, the Chamber considered that they contain restrictions of constitutional rights that the entities that issued them cannot restrict due to the lack of legal powers to do so.

These unconstitutionality only have declaratory effects, since it is only recognized that they are contrary to the Constitution, because the aforementioned regulations, as of the date of the issuance of the sentence, are no longer in force, but their pronouncement is necessary to avoid that in Future acts violate fundamental rights through limitations in their exercise.

Notwithstanding the foregoing, the Chamber is aware that it is going through a pandemic, and that therefore declaring unconstitutional the regulations related to preventing the spread of COVID-19 leaves the Salvadoran population unprotected and therefore postpones the effects of the unconstitutionality of Executive Decree No.29 (the only one in force at the time of the issuance of the judgment) until within 4 days after notification thereof, so that both the Executive and the Legislative Branch issue new regulations that protect Salvadorans, and must adhere to the law, and must establish a regime and document the need for the restriction of rights, based on technical criteria, and with real protection mechanisms for each right, clearly justifying each restriction and exception.