

COVID-19 in Paraguay: Health Success and Constitutional Deficit

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2020-05-29T10:41:54

Paraguay has been [rated](#) as the South American country that has best avoided the spread of COVID-19. The success was due, among other things, to the early adoption of social isolation measures, which apparently resulted in the fewest confirmed cases in the entire region. It could have come under the wing of the rule of the Constitution. However, up to now, the Paraguayan response to COVID-19 brought along with it the use of a constitutionally questionable law, kept in force a terrible approach to constitutional interpretation, and missed the opportunity for the branches of public power to collaborate with one another.

The start of Paraguay's sanitary measures can be traced back to March 9, when the Government issued a [decree](#), which [empowered](#) the Ministry of Health to suspended public events, activities in closed places, and in-person classes at all educational levels. Then, the President of Paraguay declared – by means of a [decree](#) issued on March 16 – “a state of sanitary emergency” based on the Health Code. This move enabled him to authorize that preventive general isolation measures be implemented nationwide. These measures were complemented by other decrees that subsequently led to [closing the country's borders](#).

In the aftermath, there are now restrictions on various fundamental constitutional rights such as freedom of movement, freedom to enter into the national territory, freedom of assembly, and freedom of demonstration.

Rights restrictions as a result of presidential decisions

Article 288 of the [Paraguayan Constitution](#) provides for the “state of exception”, a legal figure that allows restricting rights in cases of “international armed conflict” or “serious internal commotion that endangers the rule of the Constitution or the operation of those institutions created by the Constitution”. This state of exception requires Congressional approval and is subject to a series of strict protocols that regulate its execution. However, according to [statements](#) by the Minister of the Interior of Paraguay, the conditions for declaring such state were not in place.

Nonetheless, as [Diego Moreno](#), a well-known Paraguayan expert in constitutional law, warns, it is debatable whether the design of the state of exception in Paraguay is adequate to respond to the pandemic. The Paraguayan Constitution establishes an ultra-limited model of this emergency regime, which allows the Government to adopt only very specific measures. Therefore, it can be presumed that the Government, consciously or not, did not favor the limited margin of action provided by the state of exception.

On the other hand, article 202.13 of the Constitution establishes that Congress has the duty to issue emergency laws in cases of disaster or public calamity, a scenario that in — in my point of view — reflects what was indeed happening. This constitutional duty was not properly exercised. Congress passed only [one law](#), which was related to economic and financial issues. By means of this law, Congress authorized the Executive to make exceptional decisions, such as to modify the public budget.

In short, beyond the scope of the measures provided by the state of exception for a crisis like this, the Government restricted rights via decrees. The Congress, in addition to failing to fulfill its duty to pass appropriate laws during the emergency, contributed to the Executive's accumulation of powers, thus ignoring its responsibility to exert political control.

As [Rodrigo Uprimny](#) stated in his criticism of what was done in Colombia during the pandemic, it is worrying that our rights are limited by mere presidential decisions.

Validity of the law used to restrict rights

The most preposterous issue in the Government's response to COVID-19 and yet one of the most unnoticed was to base its declaration of a state of sanitary emergency on the Health Code – a law that was passed in 1980 in the midst of the dictatorship. As argued by the notable Argentinian philosopher of law, [Carlos Nino](#), only the norms that arise from a true democratic procedure are morally acceptable and legally valid. The entire validity of the Health Code – which is now being used to restrict fundamental constitutional rights – is based on the fact that it was introduced into our legal system by those who, at the time, had the coercive power of the State in their hands. The validity of the Health Code is framed in the notion that “the Law serves by the mere fact of being positive” (what [Norberto Bobbio](#) called “ideological positivism”).

It is even more paradoxical that while the use of a questionable law went unnoticed because of the law's formal validity, some of the most important opinion makers rejected the declaration of the state of exception as they considered it undemocratic. Certainly, with a long authoritarian history, highlighting [Alfredo Stroessner's almost 35-year dictatorship](#), Paraguay is a country that should be concerned with contextualizing presidential abuses. However, some seem to believe that the commitment to democracy, considering the dictatorial past, is fully realized by just rejecting the formal declaration of the state of exception, when, in fact, we are living in an identical situation, but without the controls that are typical of the formal declaration.

Constitutional interpretation and the system of checks and balances in Paraguay

Lastly, I would like to highlight the low level of constitutional interpretation and the low efficiency of mutual control between the branches of power.

The Paraguayan Constitution, in force since 1992, has brought some important interpretative debates. However, in Paraguay people have become accustomed to giving primacy, as a means of constitutional interpretation, to the will of constitutional assemblies. They have become used to the fact that the doubts that arise in the face of ambiguity, vagueness, contradiction and explanatory insufficiency – [typical of the constitutional clauses](#) – are resolved through interpretations associated with discovering the spirit of the law (i.e., what was the true intention of our last constitutional assembly?). Clearly, this raises a number of democratic problems but, suffice it to say that, among all the interpretative theories, those related to rescuing the intention of the legislator as the primary source, are deficient in democratic terms.

Finally, it seems appropriate to look back to a point recently expressed by [Roberto Gargarella](#). The health emergency could have been a great opportunity to launch another form of operation of the system of checks and balances. Article 3 of the Paraguayan Constitution provides for the “coordination” and “reciprocal control” between the branches of the public power. Therefore, it is frustrating to see how the Executive and Congress have failed to discuss whether or not the pandemic justified the declaration of the state of exception. Also, they missed the occasion for dialogue in the framework of the legislative process and carry out a restriction of rights that, although necessary, could have fully complied with constitutional protocols.

