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The Covid-19 Pandemic and the Control Exercised by the Government in the State of Ceará

*The Covid-19 Pandemic And The Control Exercised By The Government In The State Of Ceará*

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## Summary

This work seeks, through the exposition of the numerous restrictions imposed by the Government of the State of Ceará on individual freedoms in order to preserve public health, in the face of the health crisis caused by the Covid-19 pandemic, to lead readers to reflect on the constitutionality, effectiveness and consequences of the measures applied by decrees and, especially, whether this totalitarian form of government would be the new paradigm of government, as Agamben argues.

**Keywords:** Pandemic. Individual freedoms. Restrictive measures. Agamben.

## Abstract

This work seeks, through the exposition of the numerous restrictions imposed by the Government of the State of Ceará on individual liberties in order to preserve public health, in the face of the health crisis caused by the Covid-19 pandemic, to lead readers to reflect on the constitutionality, effectiveness, and consequences of the measures applied by decrees and, especially, whether this totalitarian form of government is the new paradigm of government, as Agamben argues.

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## 1. INTRODUCTION

In December 2019, the respiratory syndrome caused by the SARS virus began in China.

Cov-2, which causes COVID-19, but which spread rapidly throughout the world, causing many deaths and a major economic, social, political, and legal crisis. Amidst the uncertainties, above all,

Based on political and scientific principles, the government understands this to be the only viable way to prevent losses.

Public health concerns – the collapse of the health system – have intensified interventions in the lives of citizens.

In this context, we are witnessing a series of restrictions, almost complete in the vast majority of cases.

Sometimes, it affects our individual freedoms, especially the right to work, to free enterprise, to

Meetings, religious services, and transportation are all guaranteed by the Federal Constitution. However, taking into account

Given the delicate health situation, the Supreme Court, through legislation, authorized Governors and Mayors to...

to establish quarantine, isolation, vaccination passports, among other measures, by means of a decree.

Here, it is worth noting that although these rights are not absolute, there are instances of state...

The exceptions are exhaustive and are: State of Siege, State of Defense, and Federal Intervention, and also...

Thus, only the President of the Republic can, after consulting the Council of the Republic and the Council...

The Ministry of National Defense decrees them, and in the case of a State of Siege, it also needs authorization from Congress.

National.

In light of these events, a strong authoritarian tendency was observed.



**Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026**

The government's attempt to limit fundamental rights guaranteed by the Federal Constitution, in the interest of health.

public, based on scientific surveys that were, until then, preliminary, through a simple

State Decree, this article seeks to contribute to a reflection on whether this form of state...

The new model of government would be one of exception. Therefore, the first topic of this work presents...

if the fundamental rights listed in the Constitution are constantly violated by the measures

restrictive measures imposed by state decrees during the pandemic. The following is a list of possible scenarios.

of states of exception foreseen in the Federal Constitution (State of Defense, State of Siege and the

(Federal Intervention). Finally, *the conflict between the rights to freedom and the right to health is analyzed.*

*as well as their fair consideration.* In this context, the reader is asked: Are there fundamental rights?

Inviolable? The restrictions imposed on fundamental rights by measures to combat the pandemic.

Are they reasonable, proportionate, and adequate, considering the risks to public health? The need for

Does a satisfactory response to the pandemic justify the suspension of certain legal norms?

What would prevent the State from using this excessive control again? This model,

Could this be the new paradigm of government, as Agamben claims?

## **2. The individual rights enshrined in the 1988 Federal Constitution, constantly curtailed by measures to combat the pandemic.**

### **COVID-19**

Since December 2019, when COVID-19, a disease caused by [the virus], emerged in China.

With the new Coronavirus (Sars-Cov-2), the world watched with great fear and panic as it grew colossally. of the number of infected and dead.

On March 11, 2020, the World Health Organization (WHO) declared the pandemic of COVID-19 and, in the course of the pandemic outbreak, published several guidelines for adopting measures.

combat measures, such as quarantine, lockdown, vaccination passport, social isolation, and bans operation of commercial establishments and movement of people in public spaces,

Restrictions on the operation of public and private transport.

In this scenario, the Government of the State of Ceará, citing concern about a possible...

Due to the collapse of the public and private health systems, a state of emergency was declared on March 16, 2020.

The state declared a health emergency and established measures to address and contain the infection.

human transmission by the novel coronavirus, listed in Article 3 of Decree No. 33,510 of 2020:

Article 3. The following are suspended within the State of Ceará for 15 (fifteen) days:

I - events of any nature that require prior notification of the Public Authorities, with audience exceeding 100 (one hundred) people;

II - collective activities in public facilities that allow for the gathering of people, such as concerts, cinemas and theaters, libraries and cultural centers;



**Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026**

- III - in-person educational activities in all schools, universities and colleges, of public school systems, mandatorily starting March 19th, although this suspension may occur to begin on March 17th;
- IV - activities for the training and development of personnel within the scope of the public service that involve gatherings of more than 100 (one hundred) people;

Since the beginning of the pandemic, more than 90 decrees have been issued (up to the conclusion of this report). (article), curtailing the freedoms of the people. On March 19, the State Governor intensified the measures to combat human infection by the novel coronavirus, adopted in the decree as mentioned above, and intervening even further in the lives of citizens, published the following measures, by within Decree No. 33,519, of March 19, 2020, more precisely in its article 1:

- Article 1. On an exceptional basis, and due to the need to intensify restrictive measures. as provided for in Decree No. 33,510, of March 16, 2020, which declared a state of emergency. Health measures in the state to combat the new coronavirus infection are suspended. within the state territory, for 10 (ten) days, starting at midnight on March 20, 2020, Subject to extension, the operation of:
- I - bars, restaurants, snack bars and similar establishments;
  - II - temples, churches and other religious institutions;
  - III - museums, cinemas and other cultural facilities, both public and private; IV - academies, clubs, gyms and similar establishments; V - shops or establishments that engage in commerce or provide services of a private nature; VI - "shopping center", Shopping malls/shopping centers and similar establishments, except for supermarkets, pharmacies and places that provide health services within the aforementioned areas establishments;
  - VII - fairs and exhibitions;
  - VIII - industries, except those in the pharmaceutical, food, beverage, and product sectors. hospital or laboratory equipment, public works, blast furnace, gas, energy, water, minerals, products cleaning and personal hygiene products, as well as their respective suppliers and distributors.

Decree No. 34,600, the last one issued by the Government, establishes the passport requirement. vaccination:

- Article 11. The entry of people into events of any nature and size, restaurants, bars, beach kiosks and gyms, as well as hotel check-in by guests. and guesthouses are subject to the presentation of a health passport, in accordance with the terms of this article.
- § 1 Without prejudice to the provisions of Law No. 17,633, of August 26, 2021, it will also be A health passport is required for the entry of users, employees, and collaborators into state public sector bodies and entities.
- § 1 The access to education, health and social assistance services will be governed according to protocol. Specific to be edited by the State Health Department.
- § 2. A health passport is the proof, digital or in physical form, that certifies that The patient has completed the Covid-19 vaccination schedule, and the following was observed:

Thus, it is easy to see that citizens have regularly suffered restrictions on their rights.



Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026

rights to come and go, to remain in public squares, to assemble, to work, and to freely exercise their rights.

Religious practices, free enterprise, among others. All guaranteed in articles 1, item IV and 5.

items VI, XIII, XV and XVI, both of CF/88:

Article 1. The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District constitute a Democratic State of Law and have as fundamentals:

[...]

IV - the social values of work and **free enterprise**

Article 5. All are equal before the law, without distinction of any kind, guaranteeing to...

Brazilians and foreigners residing in the country have the inviolability of the right to life, to freedom, equality, security, and property, under the following terms:

**VI** - Freedom of conscience and belief is inviolable, and its free exercise is guaranteed.

of religious worship and guaranteed, in accordance with the law, the protection of places of worship and their liturgies;

**XIII** - The exercise of any work, trade or profession is free, provided the qualifications are met.

professionals as defined by law;

**XV** - Freedom of movement within the national territory is guaranteed in times of peace, and any person may, in accordance with the law, to enter, remain in, or leave it with one's belongings;

**XVI** - everyone may assemble peacefully, without weapons, in places open to the public, regardless of authorization, as long as they do not disrupt another meeting previously scheduled. summoned to the same location, with only prior notice to the competent authority being required;

It is worth noting that these *violated rights are known as first-generation rights* (rights of defense), *which aims to protect the individual* against undue interventions by the State (duty of abstention),

They are *defined* as an entrenched clause in the 1988 Brazilian Constitution, that is, they are considered an essential intangible core. which can only be modified by a constitutional amendment that follows a more rigorous formal procedure.

And yet, there can be no changes aimed at abolishing, suppressing, or restricting it.

Indeed, it follows the content of article 60 of the Constitution of the Federative Republic of Brazil.

**Article 60. The Constitution may be amended by a proposal:**

**I** - at least one third of the members of the Chamber of Deputies or the Federal Senate;

**II**- of the President of the Republic;

**III** - more than half of the Legislative Assemblies of the federative units,

each of them expressing themselves through a relative majority of their members.

§ 1 The Constitution may not be amended during a period of federal or state intervention. defense or state of siege.

§ 2 The proposal will be discussed and voted on in each House of the National Congress, in two rounds. It will be considered approved if it obtains, in both cases, three-fifths of the votes of the respective parties. members.

§ 3 The amendment to the Constitution shall be promulgated by the presiding officers of the Chamber of Deputies and the Federal Senate, with its respective serial number.



Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026

§ 4. No amendment proposal tending to abolish the following shall be subject to deliberation:

[...]

IV - Individual rights and guarantees.

Regarding entrenched clauses, Gilmar Mendes (2009, p. 252) states:

"The entrenched clauses, therefore, in addition to ensuring the immutability of certain values, also..."

In order to preserve the identity of the original constituent's project, they themselves participate,

As such, they are also part of the unalterable essence of this project. Eliminating the entrenched clause is already...

"to weaken the basic principles of the original constituent project guaranteed by it."

According to Jorge Miranda (2002, p. 416):

"Material limit clauses are possible, it is legitimate for the (original) constituent power to decree them, and it is imperative that they be complied with while they are in force."

However, they are constitutional norms like any other and can themselves be subject to revision, with the inherent consequences.

Opposing the double review technique which *argues that it is only forbidden to abolish and not alter*, Carlos Ayres Britto (2003, p. 76), states that *such a technique is "the most non-technical thing there is, in light of a refined Theory of the Constitution."* This is because, for him, *"the mechanism of double review It completely muddles the fields of legitimate expression of the Established Power and the Constituent Power. Therefore, falling into insurmountable contradictions."*

Along the same lines, Bulos (2012, p. 417): *"There is no doubt: the double review process It clearly disregards the rules that prescribe the immutability of other rules."*

In contrast, for Paulo Bonavides (2000, p. 173), the immutability of norms is Completely inconceivable in a heterodox and constantly transforming society:

"Constitutional immutability, an absurd thesis, clashes with life, which is change, movement,

Renewal, progress, rotation. Adopting it would be tantamount to closing all avenues to reform.

The peaceful nature of the political system, leaving the solution to crises to revolution and coups d'état.

Force and violence, thus taken as the arbiter of constitutional disputes, would soon make the...

"Discrediting the fundamental law."

Although this topic generates considerable discussion among legal scholars, *there is There are positions for and against the immutability of entrenched clauses, as well as aspects... Both positive and negative aspects are certain, as they are currently in effect within our constitutional order. and therefore must be obeyed.*

### 3. THE HYPOTHESES OF STATES OF EXCEPTION PROVIDED FOR IN THE CONSTITUTION (STATE OF DEFENSE, STATE OF SIEGE AND FEDERAL INTERVENTION)

Fundamental rights, discussed in the previous topic, are so sacred that only Some of these may be *relativized*, and only *within the framework of constitutional regimes of Exceptions: State of Siege, State of Defense, and Federal Intervention.*

For the sake of clarity, a brief explanation of the Intervention *is provided.*



Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026

Federal intervention is not applicable, since this matter *does not affect the topic* presented here, that is, it does not infringe upon the individual liberties discussed. *This is because* federal intervention represents the temporary suspension of individual liberties. of the territorial autonomy granted to the States, Municipalities and the Federal District, as provided for in articles 34 and 36 of the Federal Constitution.

*Having addressed that point, we move on to the analysis of the other instruments, State of Siege and State of Emergency. Defense. Both represent the suspension of the Democratic State, under the terms authorized by The Constitution itself, when the State finds itself facing extreme situations, such as, for example, those resulting from war, with the aim of restoring institutional order .*

According to Giorgio Agamben (2003, pp. 11-12), "(...) *exceptional measures They find themselves in the paradoxical situation of legal measures that cannot be understood within In the legal framework, the state of exception presents itself as the legal form of that which cannot exist. "Legal form."* The author then states, "*The state of exception presents itself, from this perspective, as a level of indeterminacy between democracy and absolutism.*"

The Federal Constitution provides for *such exceptional regimes*, their timeframes, procedures, authorizing circumstances and coercive measures, in articles 136, 137, 138 and 139:

**Article 136.** The President of the Republic may, after consulting the Council of the Republic and the Council of National Defense, to declare a state of defense to preserve or promptly restore, in restricted and specific locations, public order or social peace threatened by serious and imminent institutional instability or affected by large-scale calamities in nature.

**§ 1** The decree establishing the state of defense shall determine its duration.

It will specify the areas to be covered and indicate, within the terms and limits of the law, the measures. coercive measures to be in force include, among the following:

**I -** Restrictions on the rights of:

- a) meeting, even if held within associations;
- b) confidentiality of correspondence;
- c) secrecy of telegraphic and telephone communications;

**II -** Temporary occupation and use of public goods and services in the event of a calamity. public, with the Union being responsible for the resulting damages and costs.

**§ 2** The duration of the state of defense shall not exceed thirty days, and may be extended once, for an equal period, if the reasons that justified its extension persist. decree.

**§ 3** During a state of defense:

- I -** Imprisonment for a crime against the State, determined by the executor of the measure, will be by the latter. communicated immediately to the competent judge, who will release her if the situation is not legal, allowing her to... The prisoner must request a physical examination from the police authority;
- II -** the communication will be accompanied by a statement from the authority regarding the physical condition and mental state of the detainee at the time of their arrest;
- III -** The imprisonment or detention of any person may not exceed ten days, except when



authorized by the Judiciary;

**IV** - Incommunicado detention of a prisoner is prohibited.

**§ 4.** Once a state of defense has been declared or extended, the President of the Republic, within  
Within twenty-four hours, the act, along with its justification, will be submitted to the National Congress.  
which will decide by absolute majority.

**§ 5.** If the National Congress is in recess, it shall be convened extraordinarily in  
five-day deadline.

**§ 6** The National Congress shall consider the decree within ten days of its publication.  
receipt, and should continue to operate as long as the state of defense remains in effect.

**§ 7.** If the decree is rejected, the state of defense ceases immediately.

**Article 137.** The President of the Republic may, after consulting the Council of the Republic and the Council  
The Ministry of National Defense requests authorization from the National Congress to declare a state of...  
site in cases of:

**I** - serious commotion of national repercussion or occurrence of facts that prove the ineffectiveness of  
measure taken during a state of defense;

**II** - Declaration of a state of war or response to foreign armed aggression.

Sole paragraph. When requesting authorization to declare a state of siege or its extension, the President of the Republic  
shall report the reasons for the request, and the National Congress shall...  
to decide by absolute majority.

**Article 138.** The decree establishing a state of siege shall indicate its duration and the rules necessary for its implementation.  
and the constitutional guarantees that will be suspended, and, after publication, the President of  
The Republic will designate the entity responsible for implementing the specific measures and the areas covered.

**§ 1** The state of siege, in the case of article 137, I, may not be decreed for more than thirty days, nor  
extended, each time, for a longer period; in the case of item II, it may be decreed for the entire period.  
that the war or foreign armed aggression persists.

**§ 2.** If authorization is requested to declare a state of siege during parliamentary recess, the  
The President of the Federal Senate shall immediately convene an extraordinary session of the National Congress within  
five days to consider the matter.

**§ 3** The National Congress will remain in session until the coercive measures are terminated.

**Article 139.** During a state of siege declared pursuant to Article 137, I, only the following measures may be taken against  
individuals:

**I** - obligation to remain in a specific location;

**II** - detention in a building not intended for those accused or convicted of common crimes;

**III** - restrictions relating to the inviolability of correspondence, the secrecy of communications, to  
Providing information and ensuring freedom of the press, radio broadcasting, and television, as provided by law;

**IV** - suspension of freedom of assembly;

**V** - search and seizure in a dwelling;

**VI** - intervention in public service companies;

**VII** - requisition of goods.

Sole paragraph. The restrictions in item III do not include the dissemination of statements made by parliamentarians in  
their respective legislative chambers, provided that such dissemination is authorized by the respective presiding officer.

It should be noted that *only the President of the Republic can declare* a State of Defense and a State of Emergency.  
of Siege, after hearing the Council of the Republic and the National Defense Council, although not



Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026

their opinions are binding.

Regarding formal requirements, the fundamental distinction lies in the moment of submission to *consideration* by the National Congress, whereas the State of Defense comes into effect before *the* According to the Legislature's *judgment*, a State of Siege requires authorization from Congress in order to be declared. to come into effect. Another difference lies in the scope of the measure, whereas the first The first is restricted to specific locations, while the second, because it encompasses situations of national importance, does not. It is subject to this limit.

It is worth mentioning that, *in a State of Defense*, the only rights subject to restrictions are those of meeting, ownership and confidentiality of correspondence and communications, in addition to the aforementioned exception. in § 3, item I of article 136, to the prohibition of article 5, item LXI of the Federal Constitution, which states that No one shall be arrested except in flagrante delicto or by a reasoned court order. The State of The site has a broader and more severe list of restrictive measures against fundamental rights; therefore, it must be... The last option.

However, in Brazil, the population has suffered more drastic and serious limitations to its rights. fundamental, more so than those foreseen in these *exceptional regimes, and without even the eventual decreeing them. This is because* the Federal Government, with the purpose of containing the outbreak, In response to the pandemic, the government enacted Ordinary Law No. 13.979/2020, which established measures to combat the pandemic. such as social isolation, quarantine, suspension of teaching activities, trade restrictions, cultural activities and the movement of people, compulsory examinations and treatments doctors, among others.

Despite the blatant unconstitutionality of the aforementioned Law, the Supreme Federal Court, guardian of the Federal Constitution, recognizing the exercise of concurrent powers of State and district governments, and supplementary municipal governments, to take care of health and public assistance allowed each federative entity, within the scope of their respective territories, adopted restrictive measures that it deemed necessary, in defiance of the Magna Carta. See the Summary of the decision:

Summary: CONSTITUTIONAL. CORONAVIRUS (COVID-19) PANDEMIC. Respect for Federalism. Federal Law 13.979/2020. Sanitary Measures. Containing the spread of the virus. Social isolation. HEALTH PROTECTION, SANITARY AND EPIDEMIOLOGICAL SAFETY. Common and Concurrent Competencies and Respect for the Principle of Predominance of interest (Articles 23, II, 24, XII, and 25, § 1, of the Federal Constitution). State competencies for implementing measures foreseen in federal law. Argument partially upheld. GRANTED. 1. Proposal to convert a referendum on a precautionary measure into a judgment. definitive judgment on the merits, considering the existence of precedents from the Court regarding the matter. background and instruction of the case file, pursuant to Article 12 of Law 9.868/1999. 2. The seriousness of



Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026

The emergency caused by the coronavirus (COVID-19) pandemic requires authorities to act. In Brazil, at all levels of government, the concrete implementation of public health protection is crucial. with the adoption of all possible and technically sustainable measures to support and maintain the activities of the Unified Health System, always with absolute respect for constitutional mechanisms for institutional balance and maintenance of harmony and independence between the branches of government, which should be increasingly valued, avoiding... exacerbation of any personal biases that are detrimental to the conduct of public policies. essential to combating the COVID-19 pandemic. 3. Regarding health and assistance In the public sector, the Federal Constitution establishes the existence of shared administrative competence. between the Union, States, Federal District and Municipalities (art. 23, II and IX, of the CF), as well as provides Concurrent jurisdiction between the Union and the States/Federal District to legislate on protection. and the defense of health (article 24, XII, of the Federal Constitution), allowing municipalities to supplement the legislation. federal and state authorities where applicable, provided there is local interest (article 30, II, of the Federal Constitution); and also prescribing the political and administrative decentralization of the Health System (art. 198, CF, and art. 7 of Law 8.080/1990), with the consequent decentralization of the execution of services, including with regard to sanitary and epidemiological surveillance activities (art. 6, I, of Law 8.080/1990). 4. The federal Executive Branch plays the role of central entity in planning and coordinating government actions in favor of public health, but neither therefore it can unilaterally override the decisions of state, district and municipal authorities that, in the exercise of their constitutional powers, adopt measures sanitary measures foreseen in Law 13.979/2020 within their respective territories, such as imposition of social distancing or isolation, quarantine, suspension of activities of education, trade restrictions, cultural activities and the movement of people, among others. mechanisms recognized as effective for reducing the number of infections and deaths, without prejudice to the examination of the formal and material validity of each specific normative act. state, district or municipal law issued in this context by the jurisdictional authority competent. 5. Argument deemed partially valid. (ADPF 672 MC-Ref, Rapporteur: ALEXANDRE DE MORAES, Full Court, decided on 13/10/2020, ELECTRONIC PROCESS DJe-260 PUBLISHED 28-10-2020 PUBLIC 29-10-2020)

These totalitarian regimes, in which rulers manage people's lives, are justified. due to fear and panic over the risks of the disease, spread by the authorities themselves, *as well as by* That unparalleled desire for survival represents the new paradigm of government.

Agamben argues that all politics is biopolitics and that in the current context – the pandemic – this is even more relevant. COVID-19 - the alleged defense of life is being used to legitimize politics as biopolitics.

"Thus, in a perverse vicious circle, the limitation of freedom imposed by governments is..."  
accepted in the name of a desire for security that was induced by the very governments that  
"Now they intervene to satisfy him."

[...]

"Men have become so accustomed to living in conditions of perpetual crisis and perpetual..."  
emergency situation where they seem unaware that their lives have been reduced to a condition  
purely biological and has lost any dimension, not only social and political, but even  
Human and emotional. A society that lives in a perpetual state of emergency cannot be...  
A free society. We actually live in a society that has sacrificed freedom for...  
so-called "security reasons" and, therefore, it is condemned to live in a perpetual state.  
"state of fear and insecurity." (2020, pp. 11 and 15-16)

#### 4. THE COLLISION BETWEEN THE RIGHT TO FREEDOM AND THE RIGHT TO HEALTH AND THE FAIR CONSIDERATION

The right to health is a fundamental social right, classified by legal experts as a  
A second-generation right, linked to equality rights, which requires action from the State.  
positive, through the implementation of public policies, with the aim of guaranteeing the minimum  
existential and, consequently, the preservation of the dignity of the human person. This is provided for in article...

Article 6, paragraph 1, of the Federal Constitution:

*Article 6. Social rights include education, **health**, food, work, and housing, transportation, leisure, security, social security, protection of motherhood and childhood, assistance to the destitute, in the form of this Constitution.*

Furthermore, according to articles 196 and 198, health is a right of all.  
and it is the duty of the State, common to all federative entities.

**Article 196.** Health is a right of all and a duty of the State, guaranteed through policies.  
social and economic measures aimed at reducing the risk of disease and other health problems and to  
universal and equal access to actions and services for their promotion, protection and  
recovery.

**Article 198.** Public health actions and services are integrated into a regionalized network and  
hierarchically structured and constitute a single system, organized according to the following  
guidelines:

- I - Decentralization, with single leadership in each sphere of government;**
- II - comprehensive care, prioritizing preventive activities, without prejudice of healthcare services;**
- III - Community participation.**

However, the Unified Health System has always been deficient, with a lack of availability.  
sufficient elective consultations, examinations, doctors, hospital beds and ICU beds, among other needs.  
This lack of public health infrastructure was substantially exacerbated by the pandemic.  
resulting from the exponential increase in the number of people infected by the Sars-Cov-2 virus, which affects the  
patient with respiratory syndrome that may lead to the need for the use of ventilators or

Mechanical ventilators.

In this context, the state government, under the argument of preventing the collapse of the systems of health, through flattening the curve of case growth, so that it would be possible to gain time to increase the capacity to care for patients, issued several decrees suspending to individual liberties, severely affecting other social rights of individuals, such as work, income, food, housing and education.

Thus, we observe the great clash between fundamental rights, on the one hand the right One has the right to health, and the other the right to individual freedoms. A situation in which fair action must be taken. Harmonization between norms, through the principle of proportionality, preventing there from... suppression of one to the detriment of another, since there is no absolute fundamental right nor hierarchy among constitutional norms.

Regarding the principle of proportionality, Ingo Sarlet, Luiz Guilherme Marinoni and Daniel Mitidiero explain:

[...] unfolds in three stages: a) adequacy, according to which the state measure must be capable of ensuring the intended result by restricting the individual's right; b) a necessity (least sacrifice or interference), which requires that in the face of more than one measure The appropriate option is the one that intervenes least in the legal sphere; c) the so-called proportionality in the strict sense, which, if the answer to both questions is affirmative Previous considerations required a weighing of the means and ends in the specific case. This is why most of the critical comments on the principle are situated at this level. It is important to remember that, in the sense indicated, proportionality operates as a criterion of assessing the constitutional legitimacy of interventionist measures by public authorities in the context of protection of fundamental rights as defensive rights (negative rights).  
(SARLET et al., 2015, p. 455-456)

Regarding this issue, Agamben (2020, p. 27) states that, *“a norm that affirms The idea that one must renounce good in order to save good is as false and contradictory as the one that, in order to protect freedom, imposes the renunciation of freedom.*

Therefore, the unrestricted use of decrees suppressing the rights of defense does not seem reasonable, because indefinite period and, most of the time, *the authorities stated* that even after Once the critical moment has passed, it would be necessary to maintain the imposed restrictions that *have caused* so much concern. The social, economic, political, and legal balance of nations is at risk, not to mention the increase in... people living in extreme poverty.

Finally, it is worth noting that at the time of imposing severe restrictions on freedoms Individuals, the world knew little about the disease, and the scientific studies that did emerge were... Preliminary findings, without peer review. Therefore, the efficiency and effectiveness of the measures were unknown. And even today, we still see the requirement for a vaccination passport, limiting the right to come and go, when it is well known that the vaccine does not prevent contagion and the spread of the virus, as well as the study regarding its effectiveness.



Year VI, v.1 2026 | Submission: 21/02/2026 | Accepted: 23/02/2026 | Publication: 25/02/2026

And the side effects of the vaccines have not yet been fully investigated.

## CONCLUSION

In the name of preserving life, the Governor limited individual rights in a way... quite severe, sometimes suppressing them completely, resorting to abuses and arbitrary actions, which They constitute a threat to the democratic rule of law.

In the interest of public health, the measures implemented compromised all other rights. and fundamental freedoms, leading to the extinction of job opportunities, resulting from The suspension of normal daily life made it impossible for many families to... provided the minimum considered essential for their survival.

Thus, it is clear that there was no fair balancing of the conflicting rights, and that the situation was disregarded. Even what was being protected—the dignity of the human person—is at stake, since such The restrictions aimed to make it possible to provide medical care to all who needed it. In addition Furthermore, the population was prohibited from coming and going, from practicing their profession, from free trade, from assembling, in The reason for the inconclusive measures regarding their positive effects in combating the pandemic.

Furthermore, it is clear that, contrary to the Constitution of the Federative Republic of Brazil, These rights were limited and/or suppressed, without any of the authorizing situations occurring. by the Constitution itself, such as the declaration of a State of Emergency.

As if that weren't enough, the Supreme Federal Court, recognizing the parallelism between the The power conferred exclusively on the President of the Republic to suspend certain rights, by means of Given the declaration of a State of Emergency and the urgent need, the head of the executive agreed. any federative entity could determine the adoption of restrictive measures, without even submitting it to... appreciation of the Legislative Branch, ultimately violating the principles of separation of powers and of constitutional symmetry.

On the other hand, it became clear that a society gripped by fear and panic, without realizing it... that her life has been reduced to a purely biological condition, she is willing to accept the imposition of Limitations on their rights, in a way never before seen in the world, not even during two wars. World War II, Russian Revolution, Cold War, influenza pandemic (Spanish flu and swine flu), without at least question the legality, constitutionality, and practical effects of such acts.

If the chief executive has all this power in his hands, he uses it when, how, and for how long. whatever is deemed necessary, through the indiscriminate use of emergency decrees, which will prevent the use of again.



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