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March 2020

# RULING 6785-20 ISSUED BY THE OFFICE OF THE COMPTROLLER DUE TO THE MEASURES ADOPTED BY MAYORS ON ACCOUNT OF THE SANITARY EMERGENCY SITUATION

On 24 March 2020, and due to the varied measures adopted by mayors and municipal authorities affecting, among others, commercial establishments, the Office of the Comptroller General of the Republic ("the Comptroller" or the "CGR") published Ruling 6785-20 (the "Ruling").

In its core, the Ruling set forth a series of criteria to clarify what are the authorities mayors have in the face of the sanitary emergency situation triggered by the dissemination of Covid-19 in Chile. Among the most relevant criteria, the Comptroller clarified that the adoption of decisions that entail affecting fundamental rights of citizens is the prerogative of the President of the Republic and the Chiefs of National Defense, as applicable, without it being the scope of action of municipal councils that of decreeing measures such as, among others, the lockdown of boroughs, declaring borough emergency, quarantined territories, local transit restrictions and the lockup or shortened business hours for certain establishments. It adds that all such measures, and the like, imply appropriating authorities they lack and altering the unity of action necessary to overcome this health crisis and restore constitutional normality.

The following is an excerpt of the Ruling:

• First of all, the Comptroller wishes to underscore that, as a result of the dissemination of coronavirus in Chile, by means of its Decree No. 4 dated 8 February 2020, the Ministry of Health declared a sanitary alert throughout the country. The latter, to empower certain authorities to take extraordinary measures to prevent the effects of this worldwide health threat. Then, by means of Decree No. 104, dated 18 March 2020, the President decreed a State of Constitutional Exception of Catastrophe for 90 days and, additionally, through Decree No. 107 from the Ministry for Internal Affairs, 346 boroughs in

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the country were declared catastrophe areas for the coming 12 months.

• On account of these circumstances, the CGR relays the constitutional rules under which States of Constitutional Exception are governed, stating that this is the only situation in which the rights and guarantees the Constitution assures everyone, can be affected, always with strict adherence to the regulation that corresponds to each of them.

• To this end, it is the prerogative of the President of the Republic -who is the one that decrees the State of Constitutional Exception- to adopt the measures entailing a restriction of rights and guarantees contemplated under the State of Catastrophe, notwithstanding the delegations he may vest on the Chiefs of the National Defense, who are the ones to lead and surveil in catastrophe areas.

• Among the duties that the Chiefs of the National Defense have, the Comptroller underscores that article 7 of the Constitutional Organic Law for States of Exception (Law No. 18,415) includes that of directly issuing instructions to every Government Official and civil servant, including municipal councils, with the sole purpose of curing the effects of the public disaster.

• As for municipal councils, the CGR highlights that these are autonomous corporations of public law, with their own status as body corporate and with their own patrimonial assets, and that their objective is that of catering to the needs of the local community and ensuring their participation in the economic, social, and cultural progress of the borough. Likewise, the Comptroller underscores, under its Constitutional Organic Law, these authorities to carry out, directly or through the concurrence of other instrumentalities of the State Administration, duties associated, in what is relevant herewith, to public health, public transport and transit, risk prevention and the rendering of aid in situations of emergency or catastrophe.

• However, according to that stated in respect to States of Constitutional Exception, the CGR adds that exercising said responsibilities may not affect, howsoever, constitutional rights and guarantees. Therefore, they must be understood as a limitation to the competencies of municipal councils.

• Moreover, the Comptroller asserts that even under conditions of public disaster, municipal councils are under the imperative of enforcing the principle of legality, consecrated in articles 6 and 7 of the Constitution and 2 of Law No. 18,575, Constitutional Organic for the General Terms of the State Administration, according to which State instrumentalities must subject their action to the Constitution

and the laws, without further responsibilities than those expressly bestowed on them by the legal system.

• The iteration is, hence, that the adoption of decisions that entail affecting fundamental rights of citizens is the prerogative of the President of the Republic and the Chiefs of National Defense, as applicable, without it being the scope of action of municipal councils that of decreeing measures such as the lockdown of boroughs, declaring borough emergency, quarantined territories, local transit restrictions and the lockup or shortened business hours for certain establishments, among others; measures all that would imply appropriating authorities they lack and altering the unity of action necessary to overcome this health crisis and restore constitutional normality.

• All of the foregoing, notwithstanding the collaboration that it is fitting for municipal councils to render in the corresponding local sphere and the coordination that there must exist among the various bodies of the State Administration. Likewise, the CGR underscores that the foregoing is notwithstanding the exercise of the responsibilities that the legal system has vested on municipal councils to set the operational hours of establishments that sell alcohol beverages and spirits and to manage the national assets of public usage there may be in the borough.

• Likewise, it adds that everything stated does not prevent mayors from lawfully exercising the right to file presentations before the Central Administration, requiring the adoption of restrictive measures to protect the health of the population.

• Finally, the Comptroller instructs it that municipal councils shall revise the measures adopted on account of the sanitary emergency affecting the country, adapting their decisions to the regulation and criteria already presented above, observing the principle of unity of action that becomes particularly relevant to overcome situations of public disaster.

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