



COURT
Constitutional
FROM ECUADOR

Quito DM, May 16, 2018

JUDGMENT N. 0 023-18-SIS CC

CASE No 0047-09-IS

CONSTITUTIONAL COURT OF ECUADOR

I. BACKGROUND

Eligibility Summary

Iván Garzón Garzón and Mónica Freire Ortiz, filed an action for non-compliance against the sentence issued on May 14, 2009, at 11:00, by the Provincial Court of Justice of Pastaza in the appeal, within the action of protection signed with the N.0 0042-2009, requested that the Constitutional Court indicate that the aforementioned judgment is unenforceable.

On April 6, 2010, the General Secretariat of the Constitutional Court, for the transition period, "in accordance with the provisions of the Organic Law of Jurisdictional Guarantees and Social Control, published in the Second Supplement of the Official Gazette No. 0 52 of October 22, 2009 " ~~inception of the process.~~

On November 6, 2012, the judges of the First Constitutional Court, composed in accordance with the provisions of articles 432 and 434 of the Constitution of the Republic, took office before the Plenary of the National Assembly.

In accordance with the springing made by the Plenary of the Agency in session of January 24, 2013, the substantiation of the case corresponded to former constitutional judge Patricio Pazmiño Freire.

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On November 15, 2015, constitutional judges Pamela Martínez Loayza, Roxana Silva Chicaíza and Francisco Butiñá Martínez were sworn in before the plenary session of the National Assembly, in accordance with the provisions of articles 432 n and 434 of the Constitution of the Republic. from Ecuador.

Through Resolution No. 004-2016-CCE, adopted by the Plenary of the Agency on June 8, 2016, the lawyer Marien Segura Reascos was appointed as constitutional judge, and it was arranged that all the processes that were in the office of the constitutional judge, Patricio Pazmiño Freire, pass to the knowledge of the aforementioned constitutional judge.

The constitutional judge, on March 8, 2018, at 4:00 p.m., acknowledged the case and, in the main, ordered the summons to the parties to be heard in a public hearing, on Monday, April 10, 2018, at 4:00 p.m., in addition, he notified with the lawsuit the first civil judge of Pastaza and judges of the Single Chamber of the Provincial Court of Justice of Pastaza, third parties with an interest and the Attorney General of the State.

Constitutional ruling whose non-compliance is alleged

The plaintiffs pointed out that the sentence issued on May 14, 2009, by the Provincial Court of Justice of Pastaza, within the appeal of the protection action signed with the N.0 042-2009 is impossible to execute. Said decision in the main provided:

PASTAZA PROVINCIAL COURT OF JUSTICE. - Puyo, May 14, 2009, 11:00 PM.- SEEN: The Court knows this case due to the appeal filed by the parties, the effect from pages 18 to vta. On page 24 of the first instance file, there is a request for a Protection Action filed by the spouses IVÁN MAR CELO GARZÓN GARZÓN and MÓNICA IVONNE FREIRE ORTIZ, against JORGE ALFREDO CAJAMARCA MALUSIN, in his capacity as Mayor of the Municipal Government of the canton Mera; Gives. VERÓNICA GUEV ARA in her capacity as Political Chief; MARIANITA CERDA, Cantonal Police Station; Dr. ANITA SERRANO, Health Director; Ledo. EDGAR PRECIADO, Municipal Commissioner, Dr. RAMIRO CARVAJAL, President of the Civic Board, Dr. Eunice Villacrés, Vice President of the Civic Board, Ing. SANDRA CHIRIBOGA, TECH. Sustainable Development (...). In the species, the Isla farm, having been installed, in a sector that even the same name motivates " ISLA", is surrounded on one side by the San Jorge estuary, and on the other side, with the Alpayacu river, this last river well known in this jurisdiction by all its inhabitants and tourists, it is a symbol and icon in the Mera canton, in the province of Pastaza, in the Amazon region and therefore in the country, because its slopes are born from the mountain range called Habitagua and de los Llanganates (...) SEVENTH.- The court considers that the judge must apply the

healthy criticism at the time of solving, the same one that should be a balanced system,\y



equitable, product of the human understanding in search of finding the truth, relying on logical propositions, on the norms established both in the Constitution, Organic Laws, to discern what is true from what is false, appreciating the evidence with a deep cognitive analysis, in this regard the Code of Civil Procedure, in Article 115 determines that the evidence must be assessed as a whole, in kind, it follows that although it is true that our Political Constitution and Civil Legislation protects private property, when it fulfills the social function, this last criterion of a very broad nature must be understood that the social function is not only linked to the workplace but to a true general context, which includes the right of the people to live well, under stable conditions of health, healthy environment, etc. . With regard to WATER, a vital liquid, nowadays in danger due to the enormous settlement of industries of different kinds, which in one way or another put at risk this precious resource, the elixir of life, which deserves to be protected by the human species for its own coexistence today and forever; our Political Constitution of Ecuador, very wisely establishes that our Country is a State of Constitutional rights, not only for man but for nature, it must be understood that all of us who dwell on the face of the earth are part of a whole, which must prevail collective interest over private interest even when the latter is difficult to accept, as in the case at hand because it has been invested in an unfeasible place by setting up a large-scale pig farm for the production and exploitation of pigs, as well as great impact on the environment of the sector, having to clarify that the file contains abundant evidence of having been questioned the installation of the aforementioned farm by the Mayor of the Municipal Government of Mera Canton, since 2006, in the same way an analysis of laboratory for water samples from the Alpayacu River, at the Leopoldo Izquieta Pérez Hygiene Institute, at the request of the Directorate Health Department of Pastaza, likewise the Environmental authorities have issued their respective reports; institutions that are in the unavoidable obligation to watch over the interests of the population, not only urban but also rural, and why not say it, the enormous flow of national and international tourists, for these considerations: For the respect of nature, the Constitution and the Law, taking into account that effective mechanisms must be established to achieve the restoration of natural resources in order to eliminate or mitigate harmful environmental consequences, noting that this Court proceeded to make a direct and personal observation to the place where the pig farm called La Isla is installed, therefore this Court of the Provincial Court of Justice of Pastaza, accepting the appeal of the passive legitimized; ADMINISTERING JUSTICE, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, THE CONSTITUTION AND THE LAWS OF THE REPUBLIC, revokes the sentence increased in degree and therefore rejects the protection action proposed by the spouses IVÁN MARCELO GARZÓN AND MÓNICA IVONNE FREIRE ORTIZ, and consequently the appeal filed

considerando

Considering that the Island Pig Farm has a large number of pigs both for breeding\y

as for fattening, and therefore its additions, provides, by principle of equity, a period of three months, counted from the notification of the ruling, to proceed with the evacuation of all the pig cattle...

Case Background

Iván Marcelo Garzón Garzón and Mónica Ivonne Freire Ortiz, in their own rights, as owners of the La Isla pig farm, filed a protection action against the official letter of January 29, 2009, an administrative act in which the mayor of Mera and other authorities granted them a maximum period of 8 days to proceed to evacuate all the pigs from the farm. The authorities based this decision on the fact that the owners of the farm had not obtained the environmental license and that they did not have the corresponding operating permit.

The plaintiffs alleged the violation of the right to due process in relation to the defense and guarantee of motivation, in addition to the violation of the right to property, and the right to legal certainty. The protection action was known and substantiated by the First Civil Court of Pastaza. On March 25, 2009, Dr. Antonio Kubes, as the first civil judge of Pastaza, essentially decided the following:

With all these considerations and what has been determined by the technical reports provided to which I refer if necessary, the Alternate First Civil Judge of Pastaza "ADMINISTERING JUSTICE, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, AND BY AUTHORITY OF THE CONSTITUTION AND THE LAWS OF THE REPUBLIC" accepts the protection action proposed by Messrs. IVAN MARCELO GARZÓN GARZÓN AND MÓNICA FREIRE ORTIZ, consequently it is provided: leave without effect the contested administrative act, issued by Messrs.: JORGE ALFREDO CAJAMARCA MALUCIN, Mayor of the Municipal Government of the Mera canton, Leda, VÉRONICA GUEV ARA, Political Chief, Mrs. MARIANITA CERDA, National Police Station, Dr. Ramiro Carvajal, President of the Civic Board (...) this is the content of the official letter dated January 29, 2009, and ordered the definitive suspension of the measures adopted against the owners and facilities of the "La Isla" farm, and because the Political Constitution of The Republic of Ecuador allows us, due to its flexibility and its own interpretation, modulating this sentence by finding two conflicting principles and weighing them up. Island comply with the recommendations





techniques indicated by the experts, which are found in the constant reports from pages 140 to 158 of the file, in order to mitigate the environmental damage that is being caused, for the control of compliance with what is ordered, I order that the technical gentlemen Dr. Celso García Valle of the Ministry of Agriculture, Livestock and Fisheries and the Ing. Franklin Guamán Bosmediano from the Ministry of the Environment, monitor the progress of the mitigation works by conducting an Environmental Audit (...). The owners of the "La Isla" farm are also ordered to obtain an Environmental Management License from the corresponding ministry within a period of no more than one year. I save the legal powers of the Ministry of the Environment to regulate and apply the sanctions that it deems convenient and that are typified in the law to sanction non-compliance with the provisions that the owners of the La Isla farm must comply with. The Constitution of Ecuador urges us citizens and judges in particular to be guarantors of the rights and guarantees contemplated in the Magna Carta, I recommend that the Municipal Authorities, together with the authorities of the Mera canton, immediately manage the construction of a collector of sewage in the route of the Río Chico, and prior to the mouth of the Río Alpayacu, an oxidation pool is built, in order to eliminate the greatest contamination that has been detected by the water control analyses, indicated and which is detailed in the constant report from pages 189 to 194 of the file.

Mr. Alfredo Cajamarca Malucin and the Abg. Jimena Calle Regalado, in her capacity as mayor and trustee of the Municipal Government of Mera, filed an appeal, which was substantiated by the Provincial Court of Justice of Pastaza, which on May 14, 2009 resolved the following:

With regard to WATER, a vital liquid, nowadays in danger due to the enormous settlement of industries of different kinds, which in one way or another put at risk this precious resource, the elixir of life, which deserves to be protected by the human species for its own coexistence today, tomorrow and forever; our Political Constitution of Ecuador very wisely establishes that our country is a state of constitutional rights, not only for man but for nature, it must be understood that we all dwell on the face of the earth, we are parts of a whole, that the collective interest must prevail over the particular interest even when the latter is difficult to accept, as in the case at hand because it has been invested in an unfeasible place by installing a pig farm of great magnitude in the production and exploitation of pigs as well as having a great impact on the environment of the sector, having to clarify that in the file there is abundant evidence of having been questioned the installation of the aforementioned farm by the Mayor of the Municipal Government of Mera Canton, since 2006, in the same way , laboratory analysis of samples of the river has been carried out A1payacu, at the Institute of

Higiene Lcopoldo Izquieta Pérez, at the request of the Pastaza Health Directorate, as well as

Even the environmental authorities have issued their respective reports; institutions that are under the inescapable obligation to look after the interests of the population, not only urban but also rural, and why not to mention the enormous (sic) flow of national and international tourists, for these considerations: For respect for nature, to the Constitution and the Law, taking into account that effective mechanisms must be established to achieve the restoration of natural resources in order to eliminate or mitigate harmful environmental consequences, noting that this Court proceeded to carry out directly and personally an observation to the place matter where the pig farm called La Isla is installed, therefore this Court of the Provincial Court of Justice of Pastaza, ~~ADMINISTRATIVE JUSTICE~~, ~~ADMINISTRATIVE JUSTICE~~, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, THE CONSTITUTION AND THE LAWS OF THE REPUBLIC, revokes the sentence increased in degree and therefore rejects the protection action proposed by the spouses IVAN MAR CELO GARZÓN AND MÓNICA IVONNE FREIRE ORTIZ, and consequently, the appeal filed by the plaintiffs; Regarding the evacuation of pigs, the Court, considering that the La Isla pig farm has a large number of pigs for both breeding and fattening, and therefore its additions, establishes, by principle of fairness, a period of three months, counted from the notification with the ruling, to proceed to the evacuation of all the pig cattle, this sentence executed ...

Once the three-month term granted in the sentence had expired, the mayor and the trustee attorney of the Mera canton requested that the sentence be executed, in the process on page 261, there is a document from Messrs. Jorge Ramiro Roba and Izurieta and Marta Ortiz Lara, who pointed out that they are the new owners of the La Isla farm, that they are not involved in the contested administrative act, that the sentence whose compliance is sought has effects between the litigating parties, and they were not a party to the proceedings, and therefore they argued that they were not may violate the rights of third parties, especially the right to property, and they requested that the judicial authority refrain from ordering the execution of the sentence.

On August 27, 2009, the first civil judge of Pastaza, within the execution of the sentence, went to the facilities of the pig farm in order to carry out the procedure of evacuation of the pig herd, in said procedure Messrs. Jorge Ramiro Robayo Izurieta and Marta Ortiz Lara, indicated that they are the current owners of the establishment, the lawyer Salomón

Lozada in the name of Messrs. Iván Marcelo Garzón Garzón and Mónica Freire Ortiz, regarding the transfer of ownership of the property, stated the following: "

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have seen the need to divest themselves of the property, because there is an illegal resolution that has caused enormous damage, including economic damage, to the current sellers of this property, since the cost of the facilities exceeds one million dollars and they are forced to sell at the ridiculous price of eighty thousand dollars due to this Resolution of the Provincial Court of Pastaza... ". Faced with this situation, the judge suspended the proceeding and ordered that the case go up for consultation to the Provincial Court¹¹.

By order of September 24, 2009, the Provincial Court of Justice of Pastaza returned the file to the judge of first instance and stated that "there is no legal basis for the improper consultation." The first civil judge of Pastaza presented a report in which he detailed all the reasons that have prevented him from complying with what was ordered in the sentence.

At the public hearing held on April 10, 2018, Ab.

Guillermo Antonio Kubes Robalino, who handed down the sentence in the first instance as the first civil judge of Pastaza, indicated that the sentence whose compliance is demanded could not be executed in view of the fact that Messrs. Iván Marcelo Garzón Garzón and Mónica Ivonne Freire Ortiz, after the issuance of the second instance judgment that denied the protection action, proceeded to the sale of the pig farm to Messrs. Jorge Ramiro Roba and Izurieta and Martha Ortiz Lara, third parties unrelated to the litis, who could not cause damage and proceed with the execution of the sentence. It indicated that the sentence could not be executed because it affected the rights of third parties.

He also stated that the ruling is currently unenforceable, in view of the fact that there are no more pig farm facilities, nor pigs, nor any machinery, and he stated that in the place called La Isla, the GAD of Mera has initiated the construction of a cycle route tourism project².

¹ The record of the proceeding is contained on page 266 of the procedural file.

² Version contained in the audio CD, which contains the recording of the public hearing held at 10:00 am on April 10, 2018.

Details and grounds of the claim

Iván Marcelo Garzón Garzón and Mónica Ivonne Freire Ortiz in their lawsuit (fj. 280), filed on November 4, 2009, indicated that they sold the farm to Messrs. Jorge Ramiro Robayo Izurieta and Martha Ortiz Lara, who would be the legitimate owners of the domain. property, pigs, machinery, fixtures and furniture. They warned that the sentence has inter parte effect and therefore would not have any effect against the current owners, they requested that the file be sent to the Constitutional Court in order to determine that the sentence is unenforceable.

concrete claim

The plaintiffs requested the following:

For the above considerations, under the provisions of Article 164 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, so that the aforementioned body of constitutional control establishes that the sentence is unenforceable, for the reasons invoked.

Submitted reports

Provincial Judge of Pastaza

Dr. Segundo Oswaldo Vimos Vimos, as provincial judge of the Multicompetent Chamber of the Provincial Court of Justice of Pastaza (formerly Chamber of the Provincial Court of Justice of Pastaza), on March 26, 2018, presented a brief, contained on pages 50 of the constitutional file, in the main it referred that doctors Fausto Lana Castro and Víctor Quinlanilla, who were judges of the Chamber, are currently no longer part of the judicial function.

He pointed out that, in his capacity as a provincial judge, when processing the appeal of the protection action, he acted in accordance with the constitutional and legal regulations, and that the Chamber Provincial decided to revoke the judgment of first instance and reject the action

of protection. Once the decision has been executed, dated May 20, 2009, ÿ ÿ



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the provincial judges sent the sentence to the judge of origin, so that he could carry out what was ordered by the appeals chamber.

He stated that on September 9, 2009, the case file of the protection action was sent back to the Chamber of the Provincial Court, since the judge of first instance sent a query about "whether compliance with the sentence proceeds because there are new owners ... ". The provincial judges described the query as improper and sent the file back to the aquo judge.

It indicated that Messrs. Iván Marcelo Garzón Garzón and Mónica Ivonne Freire Ortiz filed a lawsuit against the provincial judges on August 4, 2009, alleging the annulment of the sentence, said case fell under the jurisdiction of the Second Civil Court of Paslaza, who on December 5, 2011, at 09:03 declared the cause abandoned and ordered the file.

It concluded that the Chamber of the Provincial Court, upon resolving the appeal of the protection action, fulfilled its function and once the sentence issued by said judges was found to be enforceable, it ordered that the original judge execute it.

Mayor and syndic attorney of the Decentralized Autonomous Government of
Mere

Lic. Luis Gustavo Silva Vilcacundo and Ab. José Vifián Mancera mayor and trustee attorney of the Autonomous Government only indicated judicial mailbox and email addresses to receive notifications.

Representative of the State Attorney General's Office

Dr. Elvia Susana Pachacama, as a lawyer from the National Directorate of Sponsorship of the State Attorney General's Office, appeared and checked the constitutional box to receive notifications .

Former alternate first civil judge of Pastaza

Antonio Kubes Robalino, who issued the sentence of first instance, appeared and marked the constitutional box for notifications.

II. CONSIDERATIONS AND GROUNDS OF THE COURT CONSTITUTIONAL

Competition

The Constitutional Court is competent to hear and resolve the actions of non-compliance with constitutional judgments and opinions, in accordance with the provisions of article 436, numeral 9 of the Constitution, in accordance with the provisions of articles 162 to 165 of the LOGJCC, and article 3 numeral 11 of the Codification Regulation of Substantiation of Competition Proceedings of the Constitutional Court.

Scope, purpose and object of the non-compliance action

Compliance with the sentences and opinions issued by the Constitutional Court of Ecuador, as the highest body of control, interpretation and administration of constitutional justice, is the founding axis not only of the effective administration of justice in the aforementioned matter, but it is established as a fundamental pillar in the consolidation and formation of the constitutional State of rights and justice.

In that sense, it should be considered that the verification of compliance with constitutional judgments and opinions is an obligation of the Constitutional Court enshrined in articles 86 numeral 3 final paragraph and article 43 6 numeral 9 of the Constitution of the Republic, article 162 et seq. of the Law of Jurisdictional Guarantees and Constitutional Control.

In this sense, the Plenary Session of this Agency in judgment No. 001 - 13 -SIS -CC, within case No. 0015-12-IS, stated that the scope of the non-compliance action consists of:

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... Provide protection to citizens against possible acts that violate their rights, in which the authorities ordered to comply with a sentence dictated in constitutional guarantees, have not complied with what was ordered, or have done so partially, in such a way that the reparation made does not satisfy the reparation of the violated right.


Additionally, it is important to point out that the Constitutional Court shares the criteria set forth by the Inter-American Court of Human Rights in its judgment of July 5, 2011, issued in the *Mejía Hidrovo Vs. Ecuador*, regarding:

104. (...) the effectiveness of the sentence depends on its execution. The latter, due to the fact that a *res judicata* judgment grants certainty about the right or dispute discussed in the specific case and, therefore, has as one of its effects the obligation or need for compliance. The contrary supposes the very denial of the right involved (...) 105. The Court considers that the execution of judgments must be governed by those specific standards that allow for the effective inter alia principles of judicial protection, due process, legal certainty, judicial independence, and the rule of law. The Court agrees with the European Court of Human Rights in considering that in order to fully achieve the effectiveness of the sentence, the execution must be complete, perfect, integral and without delay.

In view of the foregoing, it is inferred that the action of non-compliance with constitutional judgments and opinions as conceived by the constituent and in accordance with what was determined by the Plenary Session of the Agency in its jurisprudence, constitutes a jurisdictional guarantee whose nature makes it pursue compliance with the constitutional decision that has not been complied with by the subject obliged to do so, and in this way be able to obtain an effective comprehensive reparation.

Determination of legal problems

Once it has been clearly determined that compliance with the sentence issued on May 14, 2009, at 11:00 am, by the Provincial Court of Justice of Pastaza, is being pursued within the appeal of protection action No. 0

 042-2009, in order to resolve this action for non-compliance with

sentences and constitutional opinions, this Constitutional Court poses the following legal problems:

- 1.- Has the sentence issued on May 14, 2009, at 11:00 by the Provincial Court of Justice of Pastaza been fulfilled?
- 2.- Is it currently possible to demand compliance with the ruling issued on May 14, 2009, at 11:00 by the Provincial Court of Justice of Pastaza?

Resolution of legal problems

- 1 - Does the sentence issued on May 14 , 2009, at 11:00 by the Provincial Court of Justice of Pastaza has been fulfilled?

The provincial judges, in the sentence in question in the operative part in the main, ordered the following:

ADMINISTERING JUSTICE, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, THE CONSTITUTION AND THE LAWS OF THE REPUBLIC, revokes the sentence increased in degree and therefore rejects the protection action proposed by the spouses IVÁN MAR CELO GARZÓN and MÓNICA IVONNE FREIRE ORTIZ, and consequently, the appeal filed by the plaintiffs; Regarding the evacuation of pigs, the Chamber, considering that the pig farm on the Island has a large number of pigs for both breeding and fattening, and therefore its additions, establishes, by principle of equity, a period of three months counted from From the notification with the ruling, in order to proceed to the evacuation of all the pig cattle, once this sentence has been executed, send certified copies of it to the Constitutional Court so that it becomes part of the constitutional jurisprudence of the country...

Therefore, the Provincial Court, upon revoking the higher grade sentence, rejected the protection action presented by Iván Marcelo Garzón and Mónica Ivonne Freire Ortiz and as a measure of reparation ordered that the pigs be evacuated from the farm, in view of the large number of animals granted a period of three months for such an evacuation to be carried out. The sentence was notified to the procedural parties the same day of its issuance.



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Once the sentence had been executed, the provincial judges forwarded the file to the first-level judge to monitor compliance and execution of the sentence, the first civil judge of Pastaza, through an order of August 24, 2009, indicated that the diligence of evacuation of pigs will take place on August 27, 2009, at 15:00. On the day of the procedure, Messrs. Jorge Ramiro Robayo Izurieta and Martha Cecilia Ortiz Lara appeared, who reported that as of that date they are the owners of the farm, they delivered the public deed, title in which the judge verified the transfer of ownership.

The judge warned that the public deed was duly registered by the Municipality of Mera, with which he indicated that the transfer of ownership took place with the proper municipal authorization, he warned that no precautionary measure was ordered in the Provincial Court ruling, decided to suspend the procedure and issue a consultation to the Provincial Court, so that it rules on compliance with the sentence, which appears on page 266 of the file.

Faced with the query, the Provincial Court, through an order of September 24, 2009 (page 277), stated that said query had no legal basis and ordered the file to be returned to the judge of first instance, for the execution of the sentence. Finally, on November 11, 2009, the first civil judge of Pastaza issued a report in which he concluded that since the pig farm changed owners, it is not possible to execute the sentence, since it would be affecting the constitutional rights of third parties.

That is to say that, from the procedural precautions, it is inferred that the sentence that is the subject of this constitutional action could not have been executed, since as indicated by the judge of first instance, at the time of going to carry out the procedure of evacuation of the pig cattle When the new owners appeared, since the farm would have changed owners, the judge issued a report indicating that the sentence cannot be executed because it would affect the constitutional rights of the new owners.

2.- Is it currently possible to demand compliance with the sentence issued on May 14, 2009, at 11:00 by the Provincial Court of Justice of Pastaza?

The sentence that is the subject of this non-compliance action dismissed the protection action filed by Iván Marcelo Garzón and Mónica Ivonne Freire Ortiz, and ordered the eviction of all the animals that inhabited the La Isla pig farm, located in the Mera canton.

The substantiating constitutional judge summoned the parties to a public hearing, a procedure that took place on April 10, 2018, starting at 4:00 p.m., attended by the Municipal Government of Mera, the mayor Dr. Jesús Martínez Villamarín, the trustee attorney Dr. José Manuel Viñán Mancera, on behalf of interested third parties, Dr. Susana Pachacama, delegate of the State Attorney General, and Dr. Guillermo Kubes, who held the position of first civil judge of Pastaza, handed down the sentence of First instance.

As pointed out by the trustee attorney in his speech, the pig farm had been operating since 2006, and would have caused irreparable damage to the environment due to the high level of contamination it produced, since in said establishment there were 600 pigs for breeding and fattening. . He reported that such an establishment had to have a permit from CESA, an environmental license, permits issued by the Ministry of Health and authorization for land use from the Autonomous Government of Mera; however, he stated that the owners, Messrs. Iván Marcelo Garzón and Mónica Ivonne Freire Ortiz disregarded all the regulations, and in view of the evident contamination of the water, the mayor, political chief, cantonal commissioner, and delegate of the health minister signed an official letter in which they were granted 8 days to regulate the permits under threat of eviction³.

In his speech, Dr. Kubes pointed out that as a judge of first instance in 2009, he ordered that the Ministry of Agriculture and the Environment appoint experts to carry out chemical and biological analyzes of the water, in

>Version contained in the audio cd attached to the process, the aforementioned official letter gave rise to the protection action P".....d" P" Iváo M"cdó G"óo and Móoko Fceice O<ti,.





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which showed that there was no major contamination in the area, he also pointed out that he carried out an inspection of the farm facilities and that there were oxidation pools to treat the waste. In addition, it indicated that in view of the fact that the judgment it issued was revoked by the Provincial Court, at the time of executing the decision it was made aware that the farm had been sold, that the public deed had the endorsement of the Municipality of Mera, and that therefore no could affect the rights of third parties, therefore at that time it suspended the procedure to evacuate the pigs and made a report about the impossibility of complying with the sentence.

At the hearing in question, both the trustee attorney and the interested third party informed the constitutional judge that at present the facilities of the La Isla farm no longer exist, that the new owners voluntarily decided to vacate the place, that today, the The Autonomous Decentralized Government of Mera is building a cycle route in the place called La Isla to promote tourism.

Given the facts referred to, since at present there are no longer any pig farm facilities or cattle in the area of the Island, this Court notes that the measure of reparation ordered by the Provincial Court of Justice of Pastaza, in the judgment of May 14, 2009, at 11:00, regarding the evacuation of pigs, it can no longer be executed, since the object on which said measure fell no longer exists.

Now, it is necessary to consider that the sentence in question, in the seventh recital stated the following:

SEVENTH.- The chamber considers that the judge must apply the critical chamber at the time of resolving, which must be a balanced, equitable system, the product of human understanding in search of the truth, based on logical propositions, on the established norms. both in the Constitution, Organic Laws, to discern the true from the false, appreciating the evidence with a deep cognitive analysis, in this regard the Code of Civil Procedure in Article 115 determines that the evidence ~~whole, be the~~ ~~as~~ follows that although it is true that our Political Constitution, Civil Legislation, protects private property, when it fulfills the social function, this last criterion of a very broad nature must be understood that the

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social function is not only linked to the workplace but to a true general context, which includes the right of the people to live well, under stable health conditions, a healthy environment, etc. With regard to WATER, a vital liquid, nowadays in danger due to the enormous settlement of industries of different kinds, which in one way or another put at risk this precious resource, the elixir of life, which deserves to be protected by the human species for its own coexistence today and tomorrow, our Political Constitution of Ecuador very wisely establishes that our Country is a State of constitutional rights, not only for man but for nature, it being understood that all of us who live on the face of the earth land we are part of a whole that should prevail the collective interest over the individual interest even when the latter is difficult to accept as in the case at hand because it has been invested in an unfeasible place to install a pig farm of large magnitudes in production and exploitation of pig cattle as well as of great impact in the environment of the sector, having to clarify that in the file there is abundant evidence of having s The installation of the aforementioned farm has been questioned by the Mayor of the Municipal Government of Mera Canton, since 2006, in the same way, laboratory analysis of death has been carried out.< after water from the Alpayacu River, at the Leopoldo Izquieta Pérez Hygiene Institute, at the request of the Pastaza Health Directorate, likewise the Environmental authorities have issued their respective reports; institutions that are in the unavoidable obligation to watch over the interests of the population, not only urban but also rural, and why not say it of enormous (sic) flow of national and international tourists, for these considerations. ~~For the Constitution~~ and the Law, taking into account that effective mechanisms must be established to achieve the restoration of natural resources in order to eliminate or mitigate harmful environmental consequences, noting that this Court proceeded to make a direct and personal observation to the place where the pig farm called La Isla is installed, therefore this Court of the Provincial Court of Justice of Pastaza accepting the appeal of the passive legitimized; ADMINISTERING JUSTICE, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, THE CONSTITUTION AND THE LAWS OF THE REPUBLIC, revokes the sentence increased in degree and therefore rejects the protection action proposed by the spouses IVÁN MAR CELO GARZÓN and MÓNICA IVONNE FREIRE ORTIZ, and consequently, the appeal filed by the plaintiffs; Regarding the evacuation of pigs, the Court considers that the La Isla Pig Farm has a large number of pigs, both for breeding and fattening, and therefore their attachments; By principle of fairness, it establishes a period of three months counted from the notification of the ruling, so that all the pigs can be evacuated... .

This Court notes that the provincial judges, during the processing of the appeal, made a new visit to the pig farm, after such

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On-site verification The reasoning of the provincial judges was guided by the need to establish an effective mechanism, in order to eliminate or mitigate the harmful environmental consequences, in this particular case the evident contamination of the water, since it should be reiterated that the place where The farm was settled, the Alpayacu river is located, an important water resource of Mera, in the Amazon area of Pastaza, therefore they ordered that said farm be evicted as a source of water contamination in the area.

This Court deems it pertinent to point out that comprehensive reparation includes both material and non-pecuniary reparation for the damage caused, whose objective is that the persons whose rights have been violated enjoy and enjoy the right that was deprived of them in the most appropriate manner possible, seeking that it be restored to the situation prior to the violation and that compensation be ordered for the damage suffered. In cases where, due to the factual circumstances of each case, the right cannot be restored, the constitutional judge must establish the measure that comes closest to guaranteeing compensation for the damage caused⁴.

In the case under examination , the installation and operation of a pig farm, in a sector where important rivers converge in the Mera area, violated the rights of the population of that area to live in a healthy environment, to a safe and healthy habitat, right to health and the rights of nature, rights enshrined in articles 14, 30, 32, 66 numeral 27 and 71 of the Fundamental Norm'.

⁴ Constitutional Court of Ecuador judgment No. 146-14-SEP-CC, case No. 1773-14-EP. s
Constitution of the Republic of Ecuador: Article 14.- The right of the population to live in a healthy and ecologically balanced environment is recognized, which guarantees the sustainability and good living, *sumak kawsay* Article 30.- People have the right to a safe and healthy habitat, and to adequate and decent housing, regardless of their social and economic situation.

Article 32.- Health is a right guaranteed by the State, the realization of which is linked to the exercise of other rights, including the right to water, food, education, physical culture, work, social security, safe environments. healthy and others that support good living

The State will guarantee this right through economic, social, cultural, educational and environmental policies; and permanent, timely and non-exclusive access to programs, actions and services for the promotion and comprehensive care of health, sexual health and reproductive health. The provision of services

It is important to highlight that, at present, the constitutional text recognizes the relationship of dependence of the human being towards nature and vice versa, considering it as one more element of the natural system. Thus, Ecuadorian society has decided to build a new form of coexistence, in harmony with nature to achieve good living⁶

Of particular importance is article 11, numerals 6 and 9 of the Constitution of the Republic, where it is contemplated that the rights of nature, like the rest of the rights enshrined in the Constitution, are inalienable, indivisible, interdependent and equal. hierarchy; being a fundamental duty of the State to respect and enforce the rights guaranteed and established in the constitutional norm.

For the specific case, it is essential to consider that article 72 of the Constitution of the Republic establishes the right of nature to restoration, which is independent of the right of the affected persons to receive corresponding compensation. That is, in the face of any event that generates environmental damage, nature has the right to be fully restored, without prejudice

Health will be governed by the principles of equity, universality, solidarity, interculturality, quality, efficiency, effectiveness, precaution and bioethics, with a gender and generational approach

The preservation of the environment, the conservation of ecosystems, biodiversity and the integrity of the country's genetic heritage, the prevention of environmental damage and the recovery of degraded natural spaces are declared of public interest.

Article 66.- People are recognized and guaranteed: 27. The right to live in a healthy environment, ecologically balanced, free of contamination and in harmony with nature.

Art. 71.- Nature or Pacha Mama, where life is reproduced and carried out, has the right to fully respect its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes

Any person, community, people or nationality may demand from the public authority the fulfillment of the rights of nature. To apply and interpret these rights, the principles established in the Constitution will be observed, as appropriate.

The State will encourage natural and legal persons, and groups, to protect nature, and will promote respect for all the elements that make up an ecosystem.

6 Constitutional Court of Ecuador, judgment No. 034-16-SIN-CC, case NO. 0011-13-IN.





of the right of the people who have been affected to be compensated 7• In this sense, there is a close correlation with what is established in article 3978 of the constitutional text, which establishes the duty of the State to act in a subsidiary and immediately in the event of environmental damage, in order to guarantee the health of people and the restoration of ecosystems.

In the same sense, article 73 of the Constitution of the Republic⁹ determines as a duty of the State to establish measures aimed at protecting and restricting those activities that pose a high risk to the environment, especially the extinction of flora and fauna, destruction of ecosystems , as well as activities that may affect nature by altering the cycles of the natural system.

¹ Constitutional Court of Ecuador, case No. 034-16-SI-CC, case N°. 0011 13-IN.

⁸ Constitution of the Republic, article 397.- In case of environmental damage, the State will act immediately and subsidiary to guarantee the health and restoration of ecosystems. In addition to the corresponding sanction, the State will repeat against the operator of the activity that caused the damage the obligations that comprehensive reparation entails, under the conditions and with the procedures established by law. The responsibility will also fall on the servants responsible for carrying out the environmental control. To guarantee the individual and collective right to live in a healthy and ecologically balanced environment, the State undertakes to

1. Allow any natural or legal person, community or human group, to exercise legal actions and go to judicial and administrative bodies, without prejudice to their direct interest, to obtain from them effective protection in environmental matters, including the possibility of requesting measures precautionary measures that allow the threat or environmental damage that is the subject of litigation to cease. The burden of proof on the non-existence of potential or real damage will fall on the manager of the activity or the defendant.

2. Establish effective mechanisms for prevention and control of environmental pollution, recovery of degraded natural spaces and sustainable management of natural resources.

3. Regulate the production, importation, distribution, use and final disposal of toxic and p:dangerous materials for people or the environment

4. Ensure the intangibility of protected natural areas, in such a way as to guarantee the conservation of biodiversity and the maintenance of the ecological functions of ecosystems. The management and administration of protected natural areas will be in charge of the State

5. Establish a national system for prevention, risk management and natural disasters, based on the principles of immediacy, efficiency, precaution, responsibility and solidarity.

⁹ Constitution of the Republic, article 73.- The State will apply precautionary and restrictive measures for activities that may lead to the extinction of species, the destruction of ecosystems or the alteration of natural permanente cycles. The introduction of organisms and organic material is prohibited and .);.;"- _ poódon "in"igam"o" qdcm"v' the nacmnl genetic P"lmon

Given all of the above, this Court reiterates that the Ecuadorian State must guarantee a healthy and balanced environment for all, in order to be able to comply with this duty of protection, and to be attentive to the different needs of the country's inhabitants, the State is divided into territorial jurisdictions: provinces and cantons. In the Organic Code of Territorial Organization COOTAD, the recovery and conservation of nature and the maintenance of the environment are included among the purposes pursued by the Decentralized Autonomous Governments¹⁰.

In the case under examination, both from the procedural documents and from the information indicated in the public hearing, it is evident that the pig farm began its activities in 2006, three years later, and only in 2009 did the mayor and other authorities issue an official letter in which they granted 8 days for the owners to regularize the permits, which did not happen and then the protection action was processed, whose final decision could never be fulfilled.

This Court is struck by the fact that the Autonomous Decentralized Government of Mera has not taken immediate, effective, timely and agile actions so that the pig farm is not installed, since from its inception it constituted a serious threat to the ecosystem of the zone; After installation, it is not reported that it has been closed or that the activities have been suspended, or that any administrative sanction has been imposed on its owners, but rather that the establishment continued to operate, it was even the subject of a transfer of ownership, which had the endorsement of the municipal authorities.

The trustee attorney himself, at the public hearing, reported that every establishment, before starting its operation, required to have several

¹⁰ Organic Code of Territorial Organization COOTAD: Art. 4.- Purposes of the decentralized autonomous governments.- Within their respective territorial districts, the purposes of the decentralized autonomous governments are (...) d) The operation and conservation of nature and the maintenance of a sustainable and sustainable environment f) The obtaining of a safe and healthy habitat for citizens and the guarantee of their right to housing within the scope of their respective competences h) The generation of conditions that ensure the rights and principles recognized in the Constitution to " " of the " "dó and foodoo.miooto of " "m" do pmtocdóo iotcgml of " " h•hit.ol";

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permits among them: the CESA permit, the environmental license, the permits issued by the Ministry of Health and the authorization to use the salary of the Autonomous Government of Mera, therefore there are countless entities that should have prevented the pig farm from being installed in that site, or that activities be suspended immediately, due to the high contamination of the ecosystem, the risk of affecting the health of the inhabitants of the area, because when raising about 600 pigs, the waste from the establishment caused extremely high levels of contamination.

Caring for the environment is everyone's responsibility, however the granting of environmental licenses, authorizing and regulating the activity of animal farms for fattening and breeding in rural areas is an issue that should have been addressed with caution and diligence by the environmental authorities; which are: the Ministry of the Environment, the Ministry of Agriculture, Aquaculture, Livestock and Fisheries, the Decentralized Autonomous Government of Mera itself and a delegate from the Ministry of Health, in the case under study the pig farm worked for several years and caused great contamination in particular of the Alpayacu river, in the face of the violation of the right to have a healthy environment and the rights of nature, those who had to prevent, cease, and prohibit industrial and agricultural activities from being carried out in areas near a river were the municipal authorities and environmental. Given the omission of their duty of vigilance and care, in accordance with the provisions of article 397 of the aforementioned Constitution of the Republic, the servants in charge of carrying out environmental control who did not comply with their duty to prohibit this activity to prevent contamination of the Alpayacu river, and the San Jorge estuary must be invest

This Court, therefore, has evidenced that the judgment of May 14, 2009, issued by the Provincial Court of Justice of Pastaza has not been complied with in its entirety, and given the facts exposed in the public hearing, it is impossible to demand the compliance with the reparation measure consisting of the evacuation of the pig herd, since the pig farm no longer exists in the area.

In addition, this Court warns of the existence of an evident violation of the rights to live in a healthy environment, to a safe habitat, to live in a healthy and ecologically balanced environment, since for several years the

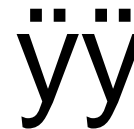
The Island pig farm was installed and operated as a pig breeding and fattening farm, generating a high rate of polluting waste that directly affected the Alpayacu River, the water artery of the Pastaza area, a violation that must be repaired.

III. DECISION

In merit of the foregoing, administering constitutional justice and by mandate of the Constitution of the Republic of Ecuador, the Plenary of the Constitutional Court issues the following

JUDGMENT

1. Declare non-compliance with the judgment issued on May 14, 2009, by the Provincial Court of Justice of Pastaza within protection action No. 042-2009.
2. Accept the action for non-compliance with the constitutional sentence raised.
3. Given the obvious damage to the ecosystem of the Alpayacu River, declare the violation of the right to live in a healthy environment, ecologically balanced, free of contamination and in harmony with nature.
4. The following are provided as comprehensive reparation measures:
 - 4.1. That the Decentralized Autonomous Government of the Mera canton, through its legal representative, order the start of the pertinent administrative procedure in order to establish the responsibility of the servers who were in charge of granting permits, environmental licenses, land use permits, who by action or omission they would have allowed the La Isla Pig Farm to be installed and operate from 2006 until its closure. The legal representative of the GAD of Mera must inform this Court about the beginning of said process within a maximum term of twenty (20) days from the notification with this sentence, as well as each





30 days, under the provisions of article 86 number 4 of the Constitution of the Republic.

4.2. That the Decentralized Autonomous Government of the Mera canton, through its legal representative, coordinate jointly with the Ministry of the Environment, the Ministry of Health and the Ministry of Agriculture, Aquaculture and Fisheries a massive information campaign aimed at the owners of poultry, pig and agricultural farms. and establishments in general that settle in areas near the Alpayacu River in the canton of Mera to carry out a mass dissemination campaign on the existing ordinances regarding the regulation of these establishments, inform them of the procedure planned to supervise the activity of said establishments and jointly develop environmental remediation plans.

4.3. That the Decentralized Autonomous Government of the Mera canton publish a report in which it indicates to the inhabitants of Mera about the state of conservation of the water resources of the province; also, to report on the existing environmental remediation plans and their execution. This report must be made within a period of 3 months from the notification with this sentence and a copy will be sent to this Constitutional Court.

4.4. That the Decentralized Autonomous Government of the Mera canton disseminate this sentence in the main banner of its website.

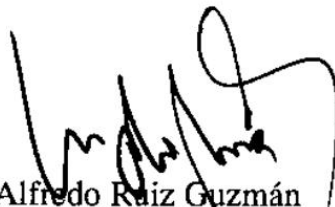
5. Determine that in accordance with the provisions of article 436 number 9 of the Constitution of the Republic, in accordance with article 164 number 4 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, this Court reserves the power to verify ex officio, compliance with this sentence.

6. The reparation measures provided for in this sentence must be executed in accordance with the Constitution of the Republic, the law and the integral application of this constitutional decision, that is, considering the decisive resolution, as well as the central arguments that are the basis of

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decision and that constitute the ratio decidendi, under precautions of application of the provisions of article 86 number 4 of the Constitution of the Republic, in case of not doing so.

7. Be notified, published and complied with.



Alfredo Ruiz Guzmán
PRESIDENTE



Jaime Pozo Chamorro
SECRETARIO GENERAL

Reason: I feel that the foregoing sentence was approved by the Plenary of the Constitutional Court, with eight votes from the judges: Francisco Butiñ artínez, Wendy Malina Andrade, Tatiana Ordeñana Sierra, Marian Segura Reinos, Ruth San Pincargote, Roxana Silva a Michicaza, Manuel Viteri Ovea and Alfredo Ruiz Guzmán, without the presence of Judge Pamela Martínez Loayza, in session on May 16, 2018. I certify it.



Jaime Pozo Chamorro
SECRETARIO GENERAL

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REASON.- I feel therefore that the above sentence was signed by Mr. Alfredo Ruíz Guzmán, president of the Constitutional Court, on Monday, June 4, two thousand and eighteen.- I certify it.

Janet L. Chamorro
Janet L. Chamorro
Secretario General

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