

VIOLATION OF COLLECTIVE RIGHTS BY THE WEAKENESS OF THE JUDICIARY SYSTEM, THREATENS BIODIVERSITY IN COLOMBIA

On the 12th of December 2014, the reporting judge of the Fourth Section of the State Council, Judge Carmen Teresa Rodriguez Ortiz, ruled in favour of the FIDIC (Foundation Institute of Immunology of Colombia), led by immunologist Manuel E. Patarroyo, with regards to the Writ of Injunction filed by the FIDIC against the Third Section of the State Council for revoking their research permit that allowed the capture of 800 wild owl monkeys (*Aotus vociferans*) per year to be used in the elaboration of a potential synthetic vaccine against malaria. The writ of Injunction argued that the second instance ruling, issued by former judge Enrique Gil-Botero, violated the fundamental right to research.

The ruling in favour of the FIDIC had the total dissenting opinion of Judge Jorge Octavio Ramirez, President of the Fourth Section of the State Council, who did not agree with the ruling, strongly arguing that it is inconsistent (Ramirez, 2015).

In turn, the reporting judge of the second instance ruling that was being attacked by the FIDIC, Judge Olga Mérida Valle de De La Hoz, presented her appeal to the ruling of the writ of Injunction. The appeal was accepted with the Order of the 2nd of March 2015 and the case was transferred to the Fifth Section of the State Council. However, on the 5th of May 2015, Judge Alberto Yepes Berreiro, reporting judge of the Fifth Section of the State Council, revoked the order granting the appeal, arguing that the appeal had been submitted extemporaneously. Judge Yepes did not take into account the fact that, within this writ of Injunction, the State Council had not respected the constitutional terms to emit its ruling; the Political Constitution states that "in no case may more than ten days elapse between the request for the writ of Injunction and its resolution". The Honourable State Council took more than eight (8) months in resolving this writ of Injunction, not respecting the constitutional terms and flagrantly breaching articles 86 and 228 of the Colombian Political Constitution.

We wish to inform the public opinion about the many anti-judicial actions undertaken by the Fourth and Fifth Sections of the State Council, who arbitrarily, discriminatorily and unequally make use of the Colombian legislation, leaving no doubt that these sections do not fulfil their responsibility of administering justice and adapting the criteria for the interpretation and application of standards, thereby seriously affecting the protection of collective rights related to the rational management of natural resources and to the administrative morality.

LEGAL ARGUMENTS

1. The writ of Injunction filed by the FIDIC is not intended to demonstrate a violation of fundamental rights. It is meant as to reopen the legal debate – as a third instance – questioning the hermeneutics, content and scope of the evidentiary assessment made by the Third Section of the State Council in the second instance ruling of the popular action No. 2001-227 (Gil-Botero, 2014; pg. 1).
2. The citizen Manuel Elkin Patarroyo, by socializing his case to the media, has made himself responsible of presenting a message that is totally contrary to that of the second instance ruling, indicating that the ruling has forbidden scientific research, and from that premise, which constitutes a fallacy, reaching conclusions to favour his interests, when what the sentence actually states is that there was a breach of the law. Consequently, we insist, this false premise called "the false antecedents" is intended to generate deceptions concerning the consequences of the ruling (Gil-Botero, 2014; pg. 5).
3. The above-mentioned scenario is reflected in the column contained in the newspaper "El Colombiano"¹, where – in a very grave way – it is stated that: "*The scientist Manuel Elkin Patarroyo met on Thursday afternoon with the President of the State Council, Judge Claudia Rojas Lasso, seeking to be allowed to work with primates*". This generates the following concerns: i) Can the parties in court proceedings meet with the President of the State Council to discuss compliance to court decisions ?; ii) Can Manuel Elkin Patarroyo "negotiate" the conditions in which the ruling of the popular action would be fulfilled with the State Council? (Gil-Botero, 2014; pg. 9).
4. Judge Ramirez states the following in his document explaining his dissenting opinion on the ruling of the Writ of Injunction (FIDIC vs Section Three of the State Council): "*The sentence gave prevalence of the right to scientific research of the FIDIC, but without considering that the exercising of this right, with regards tousing renewable or non-renewable natural resources, must comply, necessarily, with the requirements established by law for their management and rational use, in order to ensure their conservation, restoration or replacement, as well as the conservation and protection of animal and plant species*"(Ramírez, 2015; pg. 15).
5. The capture and experimentation with *Aotus nancymaae* primates, which were not authorized, appears sufficiently proved on the expedient and is admitted by the FIDIC, which shows the non-compliance to norms and granted permits (Ramírez, 2015, pg. 13).

¹Newspaper "El Colombiano", "Vía libre a pruebas en monos", by Natalia Estefanía Botero, May 10, 2014.

6. The ruling of the Writ of Injunction is inconsistent in requesting Corpoamazonia, the environmental authority sued in the popular action for violating collective rights related to administrative morality, to issue a report that decides whether or not the FIDIC can resume using wild animals in its research in malaria, when it was irrefutably evidenced that not only did they let legal terms expire in several environmental sanction processes against the FIDIC and internal investigations (Case UCI-08), but they currently have not imposed sanctions on the following environmental sanction process (Permit: DTA Resolution No. 0632 of 2010):
 - a. Order DTA No. 0213 of the 27th of December of 2010: "*By means of which the Environmental sanction process No. PS-06-91-001-018-010 is opened, imposing preventive measure and indictments to the FIDIC, for breach of its obligations under the second article of the DTA resolution No. 0632 of 2010, based on having exceeded the annual quota of specimens for the development of its research*" (Resolution 0282 of the 16th of March of 2015).
 - b. Order DTA No. 0034 of the 15th of March of 2013: Whereby charges are stated within the "*Environmental sanction process No. PS-06-91-001-005-2011 for alleged unauthorized use of species within the research permit granted by resolution No. 0632 of 2010 DTA*".

BIO-ETHICAL ARGUMENTS

The high number of night monkeys used in the FIDIC's research, as well as the procedures and conditions to which they are subjected, infringe fundamental premises, such as those formulated in the early 60s by British biologists Ressel and Burch² (2001), in their book entitled "*The principle of humane experimental technique*" as a method to ensure proper implementation of animal research.

In this regard, it is essential, in addition to the urgent population densities data that Corpoamazonia has to provide, to require studies for the replacement of and alternatives to using animals. These have to be developed in depth, long before starting the experiments, as well as the justifications to the number of specimens, forms of shelter and procedures to develop.

The ruling issued not only supposes a new and baseless hierarchy of rights, positioning research as a fundamental right above that of the environment and quality of life, but also gives a throwback to the 60s in terms of humanitarian, rational and ethical use of animals, which aggravates the domestic situation and the collective outrage related to events like those that occurred in various bullfights.

²*The Principles of Humane Experimental Technique*. 1959. Published online. Baltimore: Johns Hopkins Bloomberg. 2011. Available on the internet at: http://altweb.jhsph.edu/pubs/books/humane_exp/het-toc

ARGUMENTS AND ENVIRONMENTAL STUDIES NEEDED

1. To date Corpoamazonia lacks the technical information for granting permits for the collection of specimens of the genus *Aotus* in the southern Amazonian trapezium³ since the only available information corresponds to the reports submitted by the SINCHI Institute and the Institute of Genetics of the Universidad Nacional (Roncancio, 2012; Bloor et al., 2012). These studies correspond to the **"10F/2011 Convention: Project: Study of the genus *Aotus* in the southern Colombian Amazon Phase I"**. These studies provided the following suggestions:
 - a. With the data obtained it is not yet possible to determine extraction quotas⁴.
 - b. To date there is insufficient information to make conclusive recommendations for the management plan of the two species (*Aotus vociferans* and *Aotus nancymae*) in the southern Amazon. However, it is recommended not to authorize releases or captures in the western end of the Colombian trapezium, from the locality of Naranjales onwards, until the origin and boundaries of the restricted lineage of *Aotus nancymae* to the north of the Amazon River is determined.
2. On the other hand, as evidenced by the SINCHI in its report "Review of the protocols of the FIDIC for the rehabilitation of specimens of the genus *Aotus* to wildlife", the protocols do not meet the minimum requirements for the management of wild animals within the experimental centre, rehabilitation and release. To date there is no monitoring process of released animals. These protocols were part of the obligations of the FIDIC in its research permit, which never were fulfilled.
3. From the point of view of the conservation of the species caught illegally in the investigation of the FIDIC (*Aotus nancymae*), it has been classified as "Vulnerable" by the Primate Specialist Group of the International Union for Conservation of Nature (IUCN), classification that will be made official in the course of this year, due to its limited geographical distribution, to habitat loss and other threats. Therefore, Corpoamazonia will not be allowed to grant permits for the scientific collection/hunting until the status of the population in Colombia is not determined and the origin of *Aotus nancymae* in the country is clarified, which requires a long-term study.

³"The quotas for obtaining individuals, specimens or wildlife products may never exceed the recuperation capacity of the resource in the area where the exploitation takes place"(Article 33.Decree 1608, 1978).

⁴Mantilla, LM.2014. Response Right of Petition No. filed of document 321. Amazonian Institute of Scientific Research – SINCHI. July 23, 2014. 4pg.

Through this press release, we, the undersigned, call on the Fourth Section of the State Council to exercise their obligations relating to the protection of collective rights to the preservation of the environment, the ecological equilibrium, the protection of ecosystems located in border areas, the management and exploitation of renewable natural resources, and the conservation and protection of animal and plant species, and administrative morality, that have been violated by infringing the Colombian environmental legislation through the illegal practices conducted by FIDIC.

Signed in Pereira on the sixth (6th) of June two thousand and fifteen (2015).

REFERENCES

Source: file writ of injunction No. 110010315000-201400723-01.

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