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Industrias Infinito presented an appeal to review a judgment and reopen the case, if properly.

Mining Company Requests Magistrates To Reconsider The Annulment Of The Concession Rightfully Granted

- Magistrates reiterate that Crucitas Project respects the Central American Agreement on Biodiversity Conservation.

The complete reading of resolution # 13414-04 of the Constitutional Court of the Supreme Court of Justice, that annuls concession # 2594 of the Crucitas Project, suggests that the magistrates were not aware of the provision that expressly exempted from a new process all the concessions requested before the Mining Code reform approved on March 16th 2001.

On that date, decree # 29300-MINAE reforming the mining code regulations was published. The new rules set forth on article 9, subsection b, as a requirement for the exploitation concession, the presentation of “SETENA’s resolution of the approval on the Environmental Impact Study for the proposed exploitation and a copy of the approved Environmental Impact Study”.

This reform inverted the order that the Mining Code established since 1982, because when the Crucitas Project concession was processed, article 34 of the regulations of such code was ruling. The article textually said: “The Environmental Impact Study, mentioned on article 101 of the law, should be presented to the DGMH as soon as the title is granted and previous to the exploitation workings...”

In view of this change and since there were previous requests, like the Crucitas Project one, on August 7th 2001, five months after the guidelines reform, through decree # 29677-MINAE, a provision was published. It clearly establishes that, “All the requests in process at the time at which this regulation was published, will continue their process subject to the rules in force at the time they were presented”.

“If we take into account that the Crucitas Project obtained its exploration concession on October 1993 and that it filed the application for the exploitation concession on December 13th 1999, it becomes obvious that its process fits in the exception described on the provision of August 2001. Therefore, the exploitation concession was correctly granted on December 17th 2001, just four months after the publication of such provision”, Jesús Carvajal, Industrias Infinito’s General Manager, explained.

Carvajal emphasized that, even though they respect the judgments of the Constitutional Court, the main situation must be clarified; and, although the appeal on the grounds of unconstitutionality was presented against the Executive Power, they have already requested a revision because, “this unintentional mistake in the interpretation should be rectified so that the Crucitas Project’s vested rights will not be violated”.

Another Anti mining argument is taken away

From the alleged violation to the Agreement on the Conservation of Biodiversity and on the Protection of Priority Wild Areas in Central America, the judges concluded, on resolution # 13414-04, that there are no established provisions that prohibit the development of a mining exploitation activity “on a surface of similar dimensions to the land of the granted concession in accordance with resolution # 2594” the judgment textually indicates.

“The Court concludes that the concession act does not compromise the purposes and commitments assumed by the country through the adherence to the agreement under analysis. This body of rules does not have any provisions compromising the exploitation concession figure, and it does not establish either any prohibition to develop mining activities in a zone of certain characteristics. In consequence, there is no violation to this agreement and the grant of the mining exploitation concession does not contravene article 7 of the Political Constitution or the cited agreement.”(SIC)

What was mentioned before is highly significant because the judges ratified their judgment of July 22nd 1998, when another appeal on the grounds of unconstitutionality was rejected under the same arguments. In that opportunity, through sentence # 5315-98, it was determined that the agreement had a legal validity subsequent to the permits granted to the Crucitas Project and now the Court adds that the mining activity does not go against the terms of such agreement.

“We have always been attached to the legal framework that rules Costa Rican mining matters. That is why we are sure that we are right. Today, we know more than ever that our vested rights will be respected”, Carvajal concluded.