

EFFECTIVENESS OF THE IBAMA ENVIRONMENTAL SANCTIONING PROCESS

The environmental sanctioning process aims to enhance the effectiveness of environmental control, promoting strategies for environmental control and inspection that provide for the deterrence of illicit activities and the effective recovery of environmental damage.

Objective of the Performance Audit

The TCU conducted an audit in 2021 to assess the environmental sanctioning process at the Brazilian Institute of Environment and Renewable Natural Resources (Ibama). The audit specifically addressed the following post-inspection stages: environmental conciliation, administrative litigation, and the execution of sanctions.

Main Findings

Regarding the stage of environmental conciliation, the TCU identified the need for better structuring of the alternative of converting fines into services for the preservation, improvement, and recovery of environmental quality. It was also found that the mechanisms adopted to inform society and offenders about this procedure are insufficient, in order to publicize its benefits and encourage offenders to adhere to conciliation.

As for the litigation stage, an excessive time for the conclusion of the administrative process was detected. According to estimates from Ibama, the average time for the conclusion of administrative processes is 6 years, which can reach up to 11 years and 9 months. However, the normative provision is that the deadline for the decision at first instance should be up to 1 year, which also applies to deciding any appeal. In this sense, it was found that the pace of instruction and judgments of processes at first instance does not keep up with the number of new cases filed.

Finally, it was found that notifications to offenders have been taking, on average, 6 months to be effectively carried out in the litigation stage. However, for a process to be judged at first or second instance within a year, Ibama estimates that the notification of the parties involved should occur within 3 months.

The post-inspection stages are fundamental to ensure the effectiveness of the environmental sanctioning process. However, the flaws pointed out by the TCU in the activities related to the instruction and judgment of infraction notices indicate that these actions have not received the necessary attention to keep up with the efforts of inspection, which tends to compromise the efforts of the Federal Government to reduce the occurrence of illegal deforestation and other environmental illicit activities.

Recommendations

The TCU recommended that Ibama, the Ministry of the Environment (MMA), and the Civil House of the Presidency of the Republic adopt measures to structure the possibilities of converting fines into services for the preservation, improvement, and recovery of environmental quality.

Additionally, the Court recommended that Ibama take steps to remedy and/or mitigate the other deficiencies and weaknesses pointed out in the audit, related to mechanisms for publicizing the benefits of environmental conciliation; the working capacity of the National Instruction Team; the system for consulting norms, understandings, and decisions related to the environmental sanctioning process; among others.

Decisions

Judgment 1.973/2022-TCU-Plenary

Session date: 08/24/2022

Reporting Judge: Substitute Minister Marcos Bemquerer

TC-038.685/2021-3

Responsible technical unit: AudAgroAmbiental