

GOBERNACIÓN
Departamento Archipiélago de San Andrés,
Providencia y Santa Catalina
Reserva de Biosfera Scaflower
Nit: 892.400.038-2

DECRETO No. 0131- - - /

(18 MAR 2020)

"By means of which the Urgency is declared in the Departmental Archipelago of San Andres, Providence and Santa Catalina."

**THE GOVERNOR OF THE DEPARTMENTAL ARCHIPIELAGO OF
SAN ANDRES, PROVIDENCE AND SANTA CATALINA**

In exercise of the constitutional and legal powers, especially those contained in Articles 2, 49, 305 and 365 of the Political Constitution of Colombia, Article 43 of Law 715 of 2001, the Single Regulatory Decree 780 of 2016, Law 1801 of 2016, Articles 42 and 43 of Law 80 of 1993, literal a) of numeral 4 of Article 2 of Law 1150 of 2007 and other concordant provisions, and,

CONSIDERING:

That in accordance with Article 2 of the Political Constitution, it is essential purposes of the State to protect all people residing in Colombia, their life, honor, property, rights and other freedoms.

Likewise, Article 49 of the Constitution prescribes that "Health care and environmental sanitation are public services which the State is in charge of. All people are guaranteed access to health promotion, protection and recovery services".

The Political Constitution in its Article 365 establishes that public services are inherent to the social purpose of the State and it is the duty of the State to ensure its efficient protection to all the inhabitants of the national territory.

That Law 1751 of 2015 regulates the fundamental right to health and provides in Article 5 that the State is responsible for respecting, protecting, and guaranteeing the effective enjoyment of the right to health as one of the fundamental elements of the Social Rule of Law.

That the World Health Organization -WHO-, through Report No. 51 published on March 11, 2020 on its website, elevated COVID-19 (Coronavirus) to the category of "pandemic," where at the time, 118.322 positive cases with this disease had been officially registered in 114 countries, and the number of deaths from this cause had risen to 4.292.

That in regards of the declaration of a pandemic made by the WHO regarding COVID-19, the Ministry of Health and Social Protection issued Resolution No. 385 of March 12, 2020 "By which the health emergency is declared due to the COVID coronavirus -19 and measures are taken to deal with the virus," which declared: "Article 1, Declaration of a health emergency throughout the national territory until May 30, 2020. "And includes measures such as the prohibition of any event that congregate more than 50 people or the docking, disembarking, loading and unloading of passengers and goods from international maritime traffic passenger ships, among other measures.

That the Departmental Archipelago of San Andres, Providence and Santa Catalina, due to its insular status, has connection to the continent by air and sea, the first being more frequently with direct daily flights from Panama, Bogota, Cali, Medellin, Barranquilla, Cartagena and Canada where there is presence of confirmed cases of CONVID-19.

According to the Tourism Secretary of the Archipelago of San Andres, Providence and Santa Catalina, on a monthly average, 85.000 tourists visit the Archipelago and of these 4.000 tourists comes from the United States, Canada, France and Spain; in addition to 1.500 tourists from Italy, Germany, the United Kingdom and Netherlands. In all these countries there are confirmed cases of people infected with the CONVID-19 virus.

That the Departmental Archipelago of San Andres, Providence and Santa Catalina, due to its status as an international and national tourist reference, should foresee the possible entry of national and international tourists who may give entry to the COVID-19 virus, from their place of origin.

That the Departmental Secretariat of Health of the Archipelago of San Andres, Providence and Santa Catalina carried out an analysis of the current situation of sanitary measures to prevent, mitigate and control the risk of a possible outbreak of the virus, according to the information available in the Secretariat.

That the condition of the hospital network of the Departmental Archipelago of San Andres, Providence and Santa Catalina is not at the optimal level to deal with the CONVID-19 Pandemic.

That from the analysis carried out, it is not possible to have calculations of the possible people to become infected, given the little knowledge that COVID-19 has in the world, so it is necessary to have the capacity to expand the infrastructure currently installed, in the event that the number of patients exceeds the current supply of infrastructure.

That according to literal i) of Article 2.8.8.1.1.9 of the Single Regulatory Decree 780 of 2016 "Through which the Single Regulatory Decree of the Health and Social Protection Sector" and Article 202 of Law 1801 of 2016 "Through which the National Code of Security and Citizen Coexistence is issued," the Governor of the Departmental Archipelago of San Andres, Providence and Santa Catalina, issued Decree No. 0128 of March 18 of 2020, "Through which the Sanitary Emergency is declared in the Departmental Archipelago of San

Andres, Providence and Santa Catalina and extraordinary police measures are adopted to mitigate the risk posed by the possible arrival of COVID-19 to the jurisdiction of the Department.

That according to what is established in section 1 of Article 42 of Law 80 of 1993 "By which the General Statute of Public Administration Contracting is issued", and Decrees:

"There is a clear urgency when the continuity of the service requires the supply of goods, or the provision of services, or the execution of works in the immediate future; when situations related to states of emergency arise; when it comes to conjuring exceptional situations related to acts of calamity or constituting higher force or disaster that demand immediate action and, in general, when dealing with similar situations that make it impossible to resort to selection or public procedures."

That Articles 42 and 43 of Law 80 of 1993, incorporated the figure of urgency as a modality of direct contracting as an exceptional mechanism, designed with the sole purpose of granting effective instruments to state entities to celebrate the necessary contracts in order to face crisis situations when said contracts, due to circumstances described in Article 42 of Law 80 idem, is completely impossible to celebrate them through the ordinary selection procedures provided by law and regulation.

That the above was validated by the Honorable Constitutional Court, which in sentence C-772 of December 10, 1998, with a presentation by the Honorable Magistrate, Fabio Moron Diaz, concluded that the urgency is configured when the existence of a situation that make it impossible to go to public selection or tender procedures:

"The urgency" is a situation that any administrative authority can directly decree, without prior authorization, through a duly motivated act. That it exists or is configured when the existence of one of the following assumptions is proven: - When the continuity of the service requires the supply of goods, or the provision of services, or the execution of works in the immediate future. - When situations related to states of exception arise. - When it comes to conjuring exceptional situations related to acts of calamity or constituting higher force or disaster that demand immediate actions and, - In general, when dealing with similar situations that make it impossible to resort to public selection or tender procedures. "
(Underlined outside the text)

That along the same lines, the jurisprudence of the Council of State, Third Section, Subsection C, in sentence of February 7, 2011, filing number 11001-03-26-000-2007-00055-00, identified with internal filing No. 34425, Counselor Speaker, Jaime Orlando Santofimio Gamboa, pointed out that the urgency is an exceptional mechanism, designed when the public administration does not have the necessary period to carry out an ordinary procedure for choosing contractors, and it has the need to create contracts in order to face the conflict situation they are going through:

"Law 80 of 1993, Articles 41 to 43 incorporated the figure of urgency as a form of direct contracting. It is then an exceptional mechanism, designed with the sole purpose of granting effective tools to state entities to celebrate the necessary contracts, in order to face crisis situations, when said contracts, due to circumstances of conflict or crisis, it is completely impossible to celebrate them through public tender or direct contracting. In other words, when the Administration does not have the necessary time to carry out an ordinary contractor selection procedure. In other words, if analyzed the crisis situation, it is observed that the Administration can face it by developing a bidding process or simply resorting to the direct contracting rules, which it is impossible, therefore, a declaration of urgency is manifested."

After analyzing the conditions of the Departmental Archipelago of San Andres, Providence and Santa Catalina, and the content of Act No. 0010 of March 17, 2020, the Departmental Health Secretariat recommended that the Governor Decree the urgency, with the purpose to adopt the necessary measures in order to avoid or mitigate the possible effects caused by the over-demand of health services due to the arrival of the pandemic, as well as being able to prevent, identify early, diagnose, attend to and rehabilitate possible cases infected with COVID - 19.

Base on the foregoing,

DECREE:

FIRST ARTICLE. Declare the Urgency in the Departmental Archipelago of San Andres, Providence and Santa Catalina, with the purpose of adopting urgent measures and actions to prevent the effects of COVID-19 and guarantee the due protection of health of the inhabitants of the Departmental Archipelago of San Andres, Providence and Santa Catalina.

SECOND ARTICLE. Order the direct contracting of the goods and services necessary for the execution of the actions adopted or to be adopted by the Departmental Archipelago of San Andres, Providence and Santa Catalina to prevent, confront and implore the causes that motivate the declaration of this urgency.

THIRD ARTICLE. Order the General Secretariat of the Departmental Archipelago of San Andres, Providence and Santa Catalina to forward the contracting files to be signed, derived from this declaration of urgency, with their precedents, according to Article 43 of Law 80 of 1993, to the Comptroller General of the Departmental Archipelago of San Andres, Providence and Santa Catalina.


FOURTH ARTICLE. This Decree is in force from the date of issue.

FIFTH ARTICLE. Order the publication of this Decree on the website of the Departmental Government of the Archipelago of San Andres, Providence and Santa Catalina and in the Unified Procurement Portal.

18 MAR 2020

BE IT THUS NOTIFIED AND ORDERED

Given in San Andres Island, on **18 MAR 2020**



EVERTH HAWKINS SJOGREEN
Governor

Projected by: M Moreno./ Private S.
Revised by: M Moreno./ Private S.
Filed by: Cleotilde R./Privada