

PERUVIAN JUDICIARY SUPERIOR

COURT OF JUSTICE LIMA

Alzamora Valdez Office

Esq. Abancay y Nicolas de Pierola S/N Cercado

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NOTIFICATION N° 31238-2024-JR-DC

EXPEDIENTE	04419-2023-0-1801-JR-DC-01	COURT	1STCONSTITUTIONAL COURT
JUDGE	NUÑEZ MATOS JUAN CARLOS	LEGAL SPECIALIST	GARCIA BALDERA MARIA MILAGROS
SUBJECT	COMPLIANCE ACTION		
MATTER	PLAINTIFF ASSOCIATION INSTITUTE FOR THE LEGAL DEFENSE OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT PERU - DEFENDANT MINISTRY OF THE ENVIRONMENT ,		
ADDRESSEE	INSTITUTE FOR THE LEGAL DEFENSE OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT PERU- IDLADS PERU		

ADDRESS : **Electronic Address - N° 2447**

Attached is Resolution SEVEN dated 27/03/2024 at Fjs : 6

ATTACHING THE FOLLOWING:

ADJ. COP DE RES N°07 (SENTENCE)

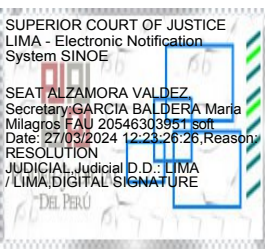
APRIL 1, 2024

MD4-002748-0

FIRST SPECIALIZED COURT



IN CONSTITUTIONAL MATTERS OF LIMA



EXPEDIENTE 04419-2023-0-1801-JR-DC-01
MATTER: COMPLIANCE ACTION : COMPLIANCE ACTION
JUDGE NUÑEZ MATOS JUAN CARLOS SPECIALIST
GARCIA BALDERA MARIA MILAGROS
RESPONDENT DEFENDANT : MINISTRY OF THE ENVIRONMENT,
PUBLIC PROSECUTOR OF THE MINISTRY OF THE ENVIRONMENT, PLAINTIFF PLAINTIFF : ASSOCIATION INSTITUTE FOR THE LEGAL DEFENSE OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT PERU - IDLADS PERU,

SENTENCE

RESOLUTION No. SEVEN.
Lima, March 26, 2024.

IN VIEW OF:

The process followed by **ASOCIACION INSTITUTO DE DEFENSA LEGAL DEL AMBIENTE Y EL DESARROLLO SOSTENIBLE PERU - IDLADS PERU**, against **MINISTERIO DEL AMBIENTE**.

RESULTS OF THE CASE:

By means of a writ dated August 14, 2023, **ASOCIACION INSTITUTO DE DEFENSA LEGAL DEL AMBIENTE Y EL DESARROLLO SOSTENIBLE PERU - IDLADS PERU** filed a **PROCESO DE** against the **MINISTRY OF THE ENVIRONMENT**, so that: Compliance with the Seventeenth Seventh Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754, approved by Supreme Decree No. 013-2019-MINAM.

The plaintiff states the following as grounds for its claim:

- 1) That, by Letter from IDLADS dated July 26, 2023, they request the Ministry of Environment to comply with the Seventeenth Final Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754.
- 2) That, since more than 10 working days have elapsed without the authority giving them a response or complying with the Seventeenth Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754.

of Law No. 30754, and, taking into account that the term to do so has expired, they file the present enforcement action.

The process of the proceeding: By resolution number one, dated August 24, 2023, the lawsuit was admitted for processing, and the summoned entity was served for a term of ten days. By means of a writ dated September 14, 2023, the Ministry of the Environment, appeared in the process, and acquitted the claim, alleging, among other concepts as contradiction arguments, the following:

- 1) That, to date, MINAM has been working on the development of the regulatory framework for REDD+ and forest carbon, which will establish the obligations of the holders of REDD+ mitigation measures, and from which it will be possible to outline a complete regulatory proposal that allows the criminalization and punishment of unlawful conduct in REDD+ matters, in accordance with the provisions of number 4 of the article of the TUO of the LPAG.
- 2) That, they have been working on the comprehensive construction of the regulatory framework for REDD+ and forest carbon, which includes provisions that develop technical aspects necessary for the understanding of REDD+, such as the "Guidelines for the identification and classification of REDD+ Actions" provided in Ministerial Resolution No. 143-2021-MINAM, and other provisions that will establish the obligations of the holders regarding criminalization and sanction, such as the "Provisions for the operation of the National Registry of Mitigation Measures (RENAMI)"; being necessary to approve the latter (those establishing obligations), in order to comply with the mandate of the Seventeenth DCF of the RLMCC.

Single hearing: The single hearing was held on March 12, 2024, during which the parties presented their arguments. Being the status of the proceeding to issue judgment.

CONSIDERING:

FIRST: Of the compliance process:

Article 200, paragraph 6 of the Political Constitution establishes that the action of compliance proceeds against any authority or official reluctant to comply with a legal rule or an administrative act. Article 65 of the Constitutional Procedural Code provides that the purpose of the Compliance Process is to order the reluctant public official or authority to comply with a legal norm or to execute a final administrative act, or to expressly pronounce itself when the legal norms order it to issue an administrative resolution or to dictate a regulation.

In this type of process, the public official or authority has an absolute duty to comply with the legal or administrative rule, and no discretion is possible on his part. Likewise, in them the rights of the plaintiff are practically unquestionable, in such a way that, once the reluctance and non-compliance of the legal norm or the administrative act is proven, according to the described guidelines, of inescapable compliance, it will correspond to protect the claim.

SECOND: Of the minimum characteristics of the compliance process: Being the nature and summary characteristic of the Compliance Process, this mechanism is not appropriate to discuss the contents of general norms or administrative acts, whose mandates are not specific or that refer to other norms and these in turn to others, since this implies a complex interpretative activity that requires another type of litigation, for which the following minimum common requirements are demanded: **a)** that it be a mandate in force; **b)** that it be a certain and clear mandate; **c)** that it not be subject to complex controversy or disparate interpretations; **d)** that it be of inescapable and mandatory compliance, and, **e)** that it be unconditional, exceptionally it may be a conditional mandate, as long as its satisfaction is not complex and does not require evidentiary action; this has been established by the Constitutional Court in STC No. 0168-2005-PC/TC1, ruling that in attention at grounds 24) is

¹⁴In order for the compliance with the legal norm, the execution of the administrative act and the order to issue a resolution to be enforceable through the compliance process, in addition to the reluctance of the public official or authority, the mandate contained therein must have the following common minimum requirements:

- a) Be a mandate in force.
- b) It must be a certain and clear mandate, that is, it must be undoubtedly inferred from the legal norm or the administrative act.
- c) It must not be subject to complex controversy or disparate interpretations.
- d) Be of unavoidable and obligatory compliance.
- e) Be unconditional.

Binding to all compliance proceedings. Consequently, for the purpose of resolving the present proceeding, it is necessary to assess whether what is claimed by the plaintiffs falls within the aforementioned assumptions.

THIRD: The specific case:

As it flows from the petition, the appellant files a Constitutional Process of Compliance, so that the respondent complies with the Seventeenth Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754, approved by Supreme Decree No. 013-2019-MINAM; this being so, it is incumbent upon the Judge to verify whether the plaintiff's claim meets the minimum requirements established in the aforementioned binding judgment, so that it can be established whether the constitutional process is pertinent to demand compliance with the aforementioned legal rule.

FOURTH: From the Regulation of Law No. 30754- Supreme Decree No. 013-2019-MINAM, it establishes the following:

"Seventeenth. On the normative proposal for the classification and sanctioning of actions related to acts or conducts punishable on forest carbon capture or sequestration and REDD+.

MINAM, in coordination with the national organizations representing indigenous or native peoples, in accordance with ILO Convention No. 169, prepares a normative proposal that allows for the typification and sanctioning of actions referred to acts or conducts punishable on forest carbon capture or sequestration and REDD+, in compliance with the safeguards, to be submitted to the corresponding authorities within one hundred eighty (180) working days from the approval of the Regulation."

Exceptionally, it may be a conditional mandate, as long as its satisfaction is not complex and does not require evidentiary action.

Additionally, in the case of compliance with administrative acts, in addition to the minimum common requirements mentioned above, such acts shall:

- f) Recognize an unquestionable right of the claimant.
- g) Allow the beneficiary to be identified.

FIFTH: It should be noted that in grounds 14, 15 and 16 of the Ruling issued in Case No. 0168-2005-PC/TC, which constitute binding precedent, the minimum requirements that must be met in order for the legal rule or administrative act to be liable to be elucidated through the compliance process have been set forth, it not being possible to resort to this route when the mandate does not comply with the minimum common requirements.

SIXTH: Thus, in the instant case, the plaintiff is seeking compliance with the provisions of the Seventeenth Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754, approved by Supreme Decree No. 013-2019-MINAM, a mandate that ***is in force***, since it has not been revoked; **it is true and clear**, since the mandamus is undeniable and indicates the obligation that the defendant must perform; Furthermore, **it is not subject to complex controversy or disparate interpretations**, since it is the same norm that indicates the duty of the defendant MINAM, the same one that has recognized that it has been advancing said legal mandate; it is also **unavoidable and of mandatory compliance**, reasons for which it is concluded that it meets the requirements established in STC N°0168-2005- PC/TC for its admissibility.

SEVENTH: This being so, it has been accredited that the defendant has failed to comply with the provisions of the Seventeenth Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754, approved by Supreme Decree No. 013-2019-MINAM; that is, to *elaborate a normative proposal that allows for the typification and sanctioning of actions referred to acts or conducts punishable on forest carbon capture or sequestration and REDD+, in compliance with the safeguards, to be submitted to the corresponding authorities within one hundred and eighty (180) working days from the approval of the Regulation*. Having exceeded the aforementioned term by too much, as more than three years have elapsed since the entry into force of the legal norm, the claim should therefore be upheld.

EIGHTH: On the other hand, it can be seen from the annexes to the lawsuit, the plaintiff attached a copy of the request dated July 26, 2023, by which it required the defendant to comply with the Seventeenth Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754, approved by Supreme Decree No. 013-2019, dated July 26, 2023, approved by Supreme Decree No. 013-2019, dated July 26, 2023.

Supreme Decree N° 013-2019-MINAM, likewise, it attaches a copy of the capture of receipt of the same, with which it is accredited that it complied with the special requirement of the lawsuit, as prescribed by Article 69° of the Constitutional Procedural Code.

EIGHTH: Regarding costs: The State can only be condemned to pay costs in attention to Article 28° of the Constitutional Procedural Code; therefore, the defendant must comply with the payment of the costs of the process.

RULING:

For the foregoing reasons, administering justice on behalf of the nation, **IT IS DECLARED:**

The claim for compliance filed by the **INSTITUTO DE DEFENSA LEGAL DEL AMBIENTE Y EL DESARROLLO SOSTENIBLE PERU - IDLADS PERU** (Institute for the Legal Defense of the Environment and Sustainable Development of Peru - IDLADS PERU) is **FOUNDED**.

IDLADS PERU; consequently, I **ORDER** that the **MINISTRY OF THE ENVIRONMENT**, **COMPLY** with the provisions of the Seventeenth Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754, approved by Supreme Decree No. 013- 2019-MINAM; with costs. -