

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° 31289-2024-JR-DC**

EXPEDIENTE	<b>04679-2023-0-1801-JR-DC-01</b>	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 ,

TARGET                      ASSOCIATION INSTITUTE FOR THE LEGAL DEFENSE OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT  
PERU - IDLADS PERU

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

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

ATTACHING THE FOLLOWING:

ADJ. COP DE RES N°0/ ( SENTENCE )

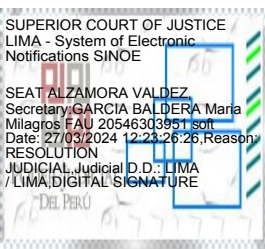
APRIL 1, 2024

MD4-002774-0

**FIRST SPECIALIZED COURT**



**IN CONSTITUTIONAL MATTERS OF LIMA**



**EXPEDIENTE** 04679-2023-0-1801-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. EIGHT.**  
**Lima, March 26, 2024.-.**

**IN VIEW OF:**

The proceeding 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 21, 2023, **ASOCIACION INSTITUTO DE DEFENSA LEGAL DEL AMBIENTE Y EL DESARROLLO SOSTENIBLE PERU - IDLADS PERU** filed an **ACT OF COMPLIANCE** against **MINISTERIO DEL AMBIENTE**, against the **MINISTRY OF THE ENVIRONMENT**, so that: Compliance with the Tenth Final Complementary Provision of the Regulation 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 Tenth Final Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754.
- 2) That more than 10 working days have passed without the authority giving them a response or complying with the Tenth Final Provision of the Framework Law on Climate Change, Law No. 30754.

Tenth Final Complementary Provision of the Regulations 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 29, 2023, the lawsuit was admitted for processing, and the summoned entity was served for a term of ten days. By letter dated September 15, 2023, the Ministry of the Environment, appears in the process, and acquits the claim, alleging among other concepts as arguments of contradiction the following:

- 1) That, the implementation of the tenth final complementary provision of the Regulation of the Framework Law on Climate Change implies that the normative proposals must comply with the process of construction of the normative proposals, they point out the advances at different levels, from the approval of some norms, the publication of the normative projects and documents in the process of elaboration with important technical advances.
- 2) That, to date, they are in the process of collecting and/or preparing technical inputs, since progress is being made in the development of the taxonomy, in the identification of leaders and experts for the technical committees for the 4 sectors prioritized for 2023: water and sanitation, energy, AFOLU (agriculture and forestry), and construction, among other inputs.

**Single hearing:** The single hearing was held on March 12, 2024, during which the parties presented their arguments. Being the status of the process 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 do so.

expressly when the legal norms order it to issue an administrative resolution or 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 unavoidable compliance, the claim will be protected.

**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 norms general rules or acts administrative acts, whose mandates are not specific or which refer to other rules and these in turn to others, given that this implies a complex interpretative activity that requires a different type of litigation, for which the following are common minimum requirements: **a)** it must be a mandate in force; **b)** it must be a certain and clear mandate; **c)** it must not be subject to complex controversy or disparate interpretations; **d)** it must be unavoidable and of mandatory compliance, y, **e)** that is unconditional, exceptionally it can be a conditional mandate, as long as its satisfaction is not complex and does not require evidence; this has been established by the Constitutional Court in STC No. 0168-2005-PC/TC1, ruling that in attention to grounds 24) is

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<sup>14</sup>14. In order for 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 to say, it must be indubitably 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.

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 aforementioned minimum common requirements, such acts shall:

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

Binding to all compliance proceedings. Consequently, for the purpose of resolving the present proceeding, it is necessary to assess whether the claims of the plaintiffs fall 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 Tenth 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 up to the Judge to verify if the claimant's pretension meets the minimum requirements established in the aforementioned binding judgment, so that it can be established if the constitutional process route is pertinent to demand compliance with the aforementioned legal norm.

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

***"Tenth. On the documents to be approved by the national authority on climate change.***

*The national authority, in coordination with the competent authorities on climate change, within a maximum term of one hundred and eighty (180) working days from the entry into force of this Regulation, approves the guidelines, methodological documents, guides, or procedures, as appropriate, on:*

- 1. The formulation and/or updating of NDCs.*
  - 2. The formulation and/or update of the ERCC and PCLCC.*
  - 3. The inclusion of adaptation and mitigation measures in the formulation and updating of policies, strategies, plans, programs and projects, not subject to SINAPLAN, nor to the National System of Multiannual Programming and Investment Management, or National Public Budget System.*
  - 4. Monitoring, evaluation and reporting of policies, strategies, plans, programs and projects that incorporate adaptation and mitigation measures.*
  - 5. Tools for monitoring and evaluation of adaptation measures.*
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6. *The operation of the National Registry of Mitigation Measures, which includes mitigation measures referring to the reduction of GHG emissions and removals in forests.*
7. *The operation of the Peruvian Carbon Footprint.*
8. *The quantification and estimation of direct and indirect costs and benefits of adaptation and mitigation measures.*
9. *The strategic and complementary use of resources from international climate funds to implement mitigation and adaptation measures.*
10. *The monitoring and reporting of climate finance from private resources".*

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

**SIXTH:** Thus, in the instant case, what the plaintiff seeks is to comply with the provisions of the Tenth 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 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 complies with the requirements established in STC N°0168-2005-PC/TC for its admissibility.

**SEVENTH: Being** so, it has accredited that the defendant has failed to comply with the provisions of the Tenth Final Complementary Provision of the Regulations of the Framework Law on Climate Change, Law No. 30754, approved by Supreme Decree No. 013-2019-MINAM; having exceeded the term indicated in said regulation, and therefore, the claim must 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-MINAM, likewise, it attaches a copy of the capture of receipt thereof, with which it is evidenced that it complied with the special requirement of the lawsuit, as prescribed by Article 69° of the Constitutional Procedural Code.

**NINTH: 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 Tenth 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. -