

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Angel Samuel Seda and others**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/19/6)**

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**PROCEDURAL ORDER NO. 15**

***Members of the Tribunal***

Prof. Dr. Klaus Sachs, President of the Tribunal

Prof. Hugo Perezcano Díaz, Arbitrator

Dr. Charles Poncet, Arbitrator

***Secretary of the Tribunal***

Ms. Sara Marzal

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**28 November 2023**

**WHEREAS** on 25 October 2023, Claimants sought the Tribunal's leave to submit an additional document (Decision No. T-369 of 2023 of the Constitutional Court of Columbia, "**2023 Decision**") into evidence and to submit a 5-page summary regarding the decision and its relevance to this arbitration;

**WHEREAS** on 1 November 2023, Respondent commented on Claimants' application, agreeing to the admission of the new document and Claimants' request to submit brief comments on the conditions that (1) Respondent has the opportunity to make a rebuttal submission, (2) which is not limited to the page limited suggested by Claimants; (3) Respondent be allowed to submit rebuttal evidence in support of its submission including (but not limited to) (i) the Decision No. SU-424 of 2023 of the Plenary of the Constitutional Court ("**2021 Decision**") and (ii) the Decision of the Superior Tribunal of Bogota of 10 June 2022, Decision of the Criminal Cassation Chamber of the Supreme Court of Justice of 5 July 2022 and the Decision of the Civil Cassation Chamber of the Supreme Court of Justice of 4 August 2022 which were the object of review in the 2023 Decision;

**WHEREAS** on 8 November 2023, Claimants commented on Respondent's request and disagreed with these conditions;

**WHEREAS** on 10 November 2023, Respondent submitted additional comments in response to Claimants' email of 8 November.

**A. Relevant provision**

1. Paragraph 16.3 of Procedural Order No. 1 dated 7 April 2020 states:

*“Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.”*

**B. The Tribunal's reasoning**

2. Pursuant to paragraph 16.3 of Procedural Order No. 1 the Tribunal will only authorize the introduction of new evidence unless “exceptional circumstances” are established by the party seeking the introduction of the additional exhibit.
3. The Tribunal notes that Respondent agrees to the introduction of the 2023 Decision into evidence subject to certain conditions. Claimants disagree with some of these conditions.

4. First, Claimants disagree with Respondent's request to introduce the 2021 Decision into the record. The Tribunal notes that according to Respondent, the 2023 Decision discusses the criteria established by the 2021 Decision. While the 2021 Decision predates the merits hearing in this case and a stand-alone application to introduce it into the record might not meet the exceptional circumstances threshold, the Tribunal considers that Respondent is nevertheless entitled to rely on it as rebuttal evidence for the 2023 Decision.
5. Furthermore, the Tribunal notes that Claimants do not object to the admission of the additional decisions which were reviewed in the 2023 Decision. Consequently, the Tribunal will also admit them as rebuttal evidence. However, Respondent may not submit additional rebuttal evidence which it has not sought leave to submit and which Claimants do not have the opportunity to comment on in their submission.
6. Claimants disagree with Respondent's request for a limitless rebuttal submission and instead propose a simultaneous submission of five pages each. The Tribunal considers that as a matter of procedural fairness, the original sequence of pleadings should be upheld so Respondent should be afforded the opportunity to respond to Claimants' submission.
7. The Tribunal agrees that it has been extensively briefed on the standard of diligence under Colombian law. In light of this, the Tribunal considers a page limit of 10 pages for each Party appropriate.

### **C. The Tribunal's Decision**

8. Based on the foregoing, the Tribunal decides as follows:
  - I. Claimants' request to introduce Decision No. T-369 of 2023 of the Constitutional Court of Columbia into the record is **granted**.
  - II. Respondent's requests to introduce (i) Decision No. SU-424 of 2023 of the Plenary of the Constitutional Court, (ii) the Decision of the Superior Tribunal of Bogota of 10 June 2022, (iii) the Decision of the Criminal Cassation Chamber of the Supreme Court of Justice of 5 July 2022 and (iv) the Decision of the Civil Cassation Chamber of the Supreme Court of Justice of 4 August 2022 into the record are **granted**.
  - III. The Parties shall assign exhibit numbers to these documents and upload them to the Box folder by 30 November 2023.

- IV. Claimants shall submit their comments on these decisions, which may not exceed 10 pages, by 11 December 2023.
- V. Respondent shall submit its comments on these decisions, which may not exceed 10 pages, by 22 December 2023.
- VI. All other requests are **denied**.

**Place of arbitration (legal seat):** Washington, D.C.

[signed]

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Professor Dr. Klaus Sachs  
(Presiding Arbitrator)

On behalf of the Tribunal