

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Angel Samuel Seda and others

v.

Republic of Colombia

(ICSID Case No. ARB/19/6)

PROCEDURAL ORDER NO. 6

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

14 September 2021

WHEREAS by letter dated 3 September 2021, Respondent submitted a request for reconsideration of Procedural Order No. 4 ("**Request for Reconsideration**");

WHEREAS on 6 September 2021, the Parties submitted a jointly agreed draft confidentiality order and asked the Tribunal to issue an order that incorporates this agreement in full;

WHEREAS on 9 September 2021, upon invitation by the Tribunal, Claimants submitted their comments on the Request for Reconsideration;

WHEREAS on 14 September 2021, the Tribunal issued the jointly agreed confidentiality order as Procedural Order No. 5 ("**Confidentiality Order**");

A. Introduction

1. This procedural order deals with Respondent's Request for Reconsideration of the decision of the Majority of the Tribunal in Procedural Order No. 4.
2. The Tribunal has carefully studied and analysed Respondent's Request for Reconsideration as well as Claimants' comments thereon.
3. Having taken into account the arguments presented by both Parties, the Majority of the Tribunal remains of the view that Articles 10.21 and 22.4 of the Treaty, based on their ordinary meaning, do not set limits to the Parties' document production obligations and that in any event, Respondent has not sufficiently established that the logged documents are exempted under these Treaty provisions or Colombian domestic laws. The Majority of the Tribunal also continues to be of the view that Respondent's concerns regarding improper disclosure can be effectively addressed by a confidentiality undertaking between the Parties, as it has now been incorporated in the Tribunal's Confidentiality Order. The Majority of the Tribunal therefore declines to revise its decisions rendered in Procedural Order No 4.
4. The Tribunal notes that Respondent is willing to produce, under protest, if it does not prevail with its Request for Reconsideration, the following documents:¹
 - the executive summaries issued in the context of investigations no. 2017-00019, 2018-00144, 2018-24867, 2020-55879², 2020-01770, 2020-0251 and 70278 logged as items nos. 6, 7, 8, 10, 11, 16 and 17 on its Exemption Log (Annex B to Procedural Order No. 4);

¹ Request for Reconsideration, p. 12 lit. a.

² See below at para. 5.

- Resolutions Nos. 0077 of 4 March 2016 and 0331 of 7 October 2016 logged as items nos. 13 and 14 on its Exemption Log; and
 - the Certificate of “Ubicación Laboral” of Ms. Cruz Pacheco, logged as item no. 15 on its Exemption Log, subject to her express consent to such disclosure.
5. The Tribunal has also taken note of Respondent's explanations regarding the merging of criminal investigation no. 2020-55879 with investigation no. 2017-02295 as well as the merging of investigation no. 2017-02295 with investigation no. 2016-00541 which file Claimants already have in its entirety.³ While the Tribunal understands that Respondent is not willing to produce the executive summary or the case file on investigation no. 2017-02295, it remains unclear to the Tribunal whether Respondent is actually willing to produce, under protest, the executive summary on investigation no. 2020-55879.
 6. Furthermore, the Tribunal understands that Respondent has conducted additional searches for documents responsive to Requests Nos. 1, 3, 7, 12 and 22 set out in Annex A to Procedural Order No. 4 and has been unable to identify additional responsive documents besides the ones listed on its Exemption Log or already produced.
 7. Finally, the Tribunal has taken note of Respondent's announcement that it will not produce any documents regarding the pending disciplinary investigations nos. 45482 and 48473 (items nos. 2 and 3 on its Exemption Log) as well as the actual files regarding criminal investigations nos. 2017-00019, 2018-00144, 2018-24867, 2020-55879, 2020-01770, 2020-0251, and 70278 (items nos. 8, 10, 11, 16, 17 on its Exemption Log).
 8. Considering the above, the Tribunal believes that no further decision is required from it at this time. Given the decision of the Majority of the Tribunal to deny the Request for Reconsideration, the Tribunal understands that Respondent will now promptly produce the documents it has offered to produce subject to reconsideration. For the avoidance of doubt, Procedural Order No. 4, as adopted by the Majority of the Tribunal, remains in full effect.

³ Request for Reconsideration, p. 13 lit. b first bullet point.

THE TRIBUNAL HEREBY ORDERS:

9. Based on the foregoing, the Tribunal, by majority, decides as follows:
- I. Respondent's Request for Reconsideration is denied.
 - II. The Tribunal reserves its decision on costs until the Final Award.

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

[Signed]

Professor Dr. Klaus Sachs
(Presiding Arbitrator)

On behalf of the Tribunal