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CONSTITUTIONAL COURT: Guatemala, April 22, 2024.

It is examined, on appeal and with a copy of the first-instance *amparo* resolution of December twenty-first, two thousand twenty-three, issued by the Supreme Court of Justice, Amparo and Preliminary Trial, which in section II) denied the interim constitutional protection requested in the constitutional action of *amparo* filed by the Republic of Guatemala, through the attorney for the Attorney General's Office, Julio Rene Ordoñez Juarez, against the Second Chamber of the Court of Appeal in Civil and Commercial Matters.

BACKGROUND

A) Facts and arguments that motivated the filing of the *amparo*: From the petitioner's statements, the documents submitted, and the digital copy of the background information filed with this Court in file 666-2024, created in connection with the complaint, is summarized as follows: **a)** Sigma Constructores, Sociedad Anónima, intervened as claimant before the Arbitration and Conciliation Center of the Guatemalan Chamber of Commerce (CENAC) against the Republic of Guatemala, forming file two-hyphen two thousand twenty (2-2020), due to the breach of administrative contract 093-2014-DGC-CONSTRUCTION, dated November 7, 2014. **b)** an arbitration award was issued on October 27, 2021, declaring the claim admissible and, consequently, among other issues, determined non-compliance with the "*...contract for the execution of the final design and construction of the rehabilitation project of the existing route and expansion to four lanes of Route CA-2, section two (CA-2) East: Escuintla - City Pedro de Alvarado'...*", duly executed, and ordered the defendant, through the Ministry of Communications, Infrastructure and Housing, to pay thirty-four million five hundred eighty-seven thousand eighty-eight dollars and six cents of the United States of America (\$34,587,088.06 USD), plus default interest, "*... calculated as of December 31, 2021, plus any interest that continues to accrue on the unpaid balances of the work estimates, until the date of actual*

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payment thereof..." specifying that payment must be made within thirty calendar days after the aforementioned ruling becomes final; **c)** a *revisión* action against this decision was filed, arguing: "*...the document based on which the claimant claimed noncompliance with the Award...*" which regulates 'the Republic of Guatemala must accept the provisions of the arbitral award, expressly waiving its right to a defense,' which violates Article 19 of the Judiciary Law...since the alleged waiver of the right of defense by the Republic of Guatemala is contrary to public order and social interest, because all the inhabitants of Guatemala, through their tax burden, are the ones who will have to pay the amount ordered by an award... the express waiver of the right to review the arbitral award, despite having been agreed in the arbitration agreement, is not fully valid or binding on the parties... Although the Ministry appeared before the Arbitration Court zero two hyphen two thousand (02-2020), at no time did the Arbitration and Conciliation Center of the Court of Commerce of Guatemala informed of the other notifications, much less of the establishment of the Arbitration Tribunal, thereby denying it its right to defense and access to justice, since that entity is the one that possesses information on what happened, in relation to the alleged breach of administrative contract 093-2014-DGC-CONSTRUCCIÓN... in addition, there is a lack of legitimacy of the entity Sigma Constructores, Sociedad Anónima to promote the Arbitration at Law, because the contract ... was under investigation and was under judicial reservation, that is why the Arbitral Tribunal ... should have refrained from further review. Likewise, the contract under discussion as well as the other documents that comprise it are subject to confidentiality, which leaves the Republic of Guatemala defenseless, because it is... under judicial reservation, this means that the evidence used to defend the Republic's interests cannot be disclosed..."; and **d)** after a series of procedural twists, the Second Chamber of Court of Appeal in Civil and Commercial Matters-**the contested authority**- issued a resolution dated October 3, 2022 - the **contested act** - in which it dismissed the *revisión* action filed by the Republic of Guatemala considering that: "*the revisión action deals with matters that are not within the scope of said revisión action as such, and therefore it is considered that the revisión filed is inadmissible, since, as demonstrated by the facts argued by the challenger, the grounds*

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for a Revision Action do not apply, and therefore the affected party, the Attorney General's Office, does not adequately prove how it is affected by incapacity, much less demonstrate the nullity of the contract. Therefore, any argument that its failure to act stems from "judicial confidentiality" is invalidated, since it does not even adequately prove such confidentiality, or scope thereof. In addition, this Court cannot verify that the award is contrary to public policy, since the Attorney General's Office does not substantiate nor prove the existence of a final court ruling declaring the contract illegal. Based on the findings of this Chamber of the Court of Appeals, the arguments of the Republic of Guatemala in the brief for review, as well as the evidence provided, are inadmissible, and therefore the appealed ruling must be upheld and resolved accordingly". **B) Alleged violations in the contested act:** it considers that the rights to defense, freedom of action, and effective judicial protection have been violated, as well as the legal principles of due process and security, since: **i)** the challenged authority did not have the original documents or the complete proceedings record which lead to the arbitral award, as they were subject to judicial confidentiality; however, arbitrarily and illegally, it decided to declare the *revisión* recourse filed without merit; **ii)** the resolution identified as harmful causes irreparable harm to the Republic of Guatemala, limiting its right to obtain a resolution in accordance with the law; **iii)** if the provisional protection is not granted, the Republic of Guatemala's rights would continue to be violated, since, if the judgment were to be enforced, it would face the difficult and burdensome task of restoring things to their previous state, and **iv)** the arbitration process was flawed from the outset, since, once the confidentiality of the proceedings became apparent, it was clear that the Republic of Guatemala was at a disadvantage, as it was unable to exercise its right of defense. In addition, the challenged court considered the documentation submitted in this regard to be insufficient, which demonstrates a latent abuse of the interests of the Republic of Guatemala. **C) Decision taken by the a quo with respect to the provisional amparo:** denied. **D) Appeal:** the Republic of Guatemala -appellant-, through the attorney of the Attorney General's Office, Julio Rene Ordoñez Juarez, appealed the decision referred to in the previous paragraph, pronouncing itself in similar terms to those indicated in its initial writ of amparo; in addition, it indicated that: **i)**

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the contested act falls under the cause established in section b) of article 28 of the Amparo, Habeas Corpus and Constitutionality Law, since the effects of the contested act may make it burdensome to restore things to their previous state., and ii) the case fits in paragraph c) of Article 28 of the Amparo, Habeas Corpus and Constitutionality Law, since it is evident that the challenged Court acted with notorious illegality and in an arbitrary manner. **E) Claim:** it was requested that the appeal be declared admissible and, consequently, that paragraph II) of the decision of December twenty-first, two thousand and twenty-three be revoked.

WHEREAS

-I-

Pursuant to Article 27 of the Amparo, Habeas Corpus, and Constitutionality Law, the suspension of the contested act is appropriate when, in the court's judgment, circumstances make it advisable. Likewise, Article 28 of the same law establishes that such interim protection must be granted when any of the circumstances provided for in that provision apply.

-II-

Having considered the facts presented by the petitioner, based on the analysis of the copy of the first instance amparo proceeding and the decision under appeal, in the opinion of this Court, in this case, the circumstances that warrant the granting of the interim protection requested are present, and the conditions set forth in Article 28 (ibid) are met. Therefore, paragraph II) of the appealed decision must be revoked insofar as it denies the requested amparo; therefore, in accordance with the law, the provisional amparo requested is granted, with the positive effect of temporarily suspending the contested act while this constitutional guarantee is being processed and resolved.

APPLICABLE LAWS

Cited articles, 265, 268, 272 literal c) of the Political Constitution of the Republic of Guatemala; 60, 61, 67, 149, 163, literal c), 185 of the Amparo, Habeas Corpus and Constitutionality Law; 33 and 34 of Agreement 1-2013 of the Constitutional Court.

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WHEREAS

The Constitutional Court, based on the foregoing and cited laws, resolves: I. **To grant** the appeal filed by the Republic of Guatemala (petitioner), through Julio René Ordoñez Juárez, attorney for the Attorney General's Office. II. Revoke paragraph II) of the appealed resolution and, upon ruling in accordance with the law, grants the requested provisional amparo, with the positive effect of temporarily suspending the contested act while this constitutional guarantee [*i.e.*, the main *amparo* action] is processed and resolved.

III. Notify the parties and send them a copy of the decision.

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