

CASE FILE 1904-2013¹
CONSTITUTIONAL COURT
Guatemala, on 20 May, 2013.

Now before the court for decision is an interlocutory constitutional appeal (*ocurso de queja*) filed by José Efraín Ríos Montt against the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as Constitutional Appeal (*Amparo*) Court.

[PROCEDURAL] BACKGROUND

I. BASIS FOR THE APPEAL (*OCURSO*):

The reasons put forward by the appellant (*ocursante*) and the examination of the proceedings that have been submitted can be summarized as follows:

a. In the *amparo* [proceeding] that the appellant (*ocursante*) brought against the First High Risk Criminal Court of First Instance “A” for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala [also referred to in the proceedings as First High Risk Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala or First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala],² he identified as the challenged act the decision rendered during the public bench trial (*audiencia de debate oral y público*) held on the 19 March, 2013, whereby that court dismissed the motion for reconsideration brought against the refusal to give leave to proceed with a recusal motion filed by his defense attorney, on the basis of the application of the principle of expiry of procedural time-limits (*principio de preclusión procesal*) pursuant to the provisions of article 344 of the Criminal Procedure Code. Such dismissal also gave support to other decisions adopted during that trial, such as the removal of his defense attorney, Francisco García Gudiel, from his legal defense, and forcing the defense attorneys of the other co-defendant to assume his legal defense.

b. Leave to proceed with the constitutional [appeal] was given by the [court] whose decision is subject to the interlocutory constitutional appeal (*ocurso de queja*), and by decision dated 26 March, 2013, it denied the provisional *amparo* that had been requested; such decision was appealed and this Court acting on appeal decided to allow the provisional constitutional appeal (*amparo*), thereby suspending the challenged act, by means of court order dated 22 April, 2013 rendered in case file 1248-2013.

c. However, in the meantime, pursuant to a motion filed by the applicant and to article 28(b) of the *Amparo, Habeas Corpus and Constitutionality Act (Ley de Amparo, Exhibición Personal y de Constitucionalidad)*, the Chamber whose decision is subject to the interlocutory constitutional appeal granted the requested interim protection by decision dated 18 April of the same year, wherein it provided as follows:

"a. the suspension of the challenged act, consisting of the decision dated 19 March of the current year, rendered in the proceedings number 01076-2011-00015 (second court clerk) rendered by the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes, which dismisses the motion for reconsideration and confirms the

¹ This includes only a partial translation. Formatting has been modified for ease of reading.

² Translator’s note: text within brackets appears in the Spanish original.

decision of the same date whereby the defense attorney Francisco García Gudiel is removed from the petitioner's defense;

*b. the provisional suspension of the public bench trial in the aforementioned proceedings until such proceedings are at the adjudication stage." This decision was appealed and, acting on appeal, this Court, by court order dated 3 May, 2013, rendered in joined cases 1563-2013 and 1573-2013 confirmed it and granted the provisional *amparo* upon the same terms decreed on first instance.*

*c. Thereafter, on 6 May, 2013, the Chamber whose decision is subject to the interlocutory constitutional appeal issued a judgment in the *amparo* concerned, whereby it granted the final *amparo* ordering the court whose decision is challenged to render a new decision in accordance with the arguments taken into consideration in the ruling, also taking into account that: " ... a provisional *amparo* was granted in the decision dated 18 April 2013, ordering the suspension of the decision dated 19 March 2013, and it ordered the temporary suspension of these oral arguments until the former had been adjudicated; on the other hand, it is recorded in the case file that the honorable Constitutional Court, by decision dated 22 April 2013, granted the provisional *amparo* to the constitutional appellant (*amparista*) José Efraín Ríos Montt, which are in force [sic] and the Court against which an appeal has been brought must comply therewith. The present ruling granting the final *amparo* ratifies the temporary suspension of oral arguments until the latter has been duly implemented pursuant to the considerations herein, [and] along these lines we must find that the First High Risk Criminal Court of First Instance "A" for Criminal Justice, Drug Trafficking and Environmental Crimes has not complied with its duty to suspend the public bench trial and consequently they are ordered under threat of penalty to comply with what was ordered by this Constitutional Court, the aforesaid court being cautioned that if it does not comply with this order, each of the members of the Court will be fined one thousand quetzals and held responsible for the resulting legal liabilities; and to report on the ruling within twenty-four hours."*

*d. For his part, the *amparista*, now appellant (*quejoso*), filed motions on 30 April, 2, 7 and 8 of May, 2013, in which he repeatedly requested the [court] whose decision is subject to interlocutory constitutional appeal to give effect to the ruling, given that the oral and public hearing continued, in defiance of what had been ordered.*

*e. The Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, requested two reports from the [court] whose decision is challenged, and did not adjudicate on the proper implementation that had been requested until the ninth of May, 2013, when it issued a decision whereby it concluded that: " ... the [court] whose decision is challenged indeed complied with the orders given by this Chamber in the judgment dated 6 May 2013, more particularly to give leave to proceed with the recusal and abstention motions filed by attorney Francisco García Gudiel and against the members of this Court, just as it had been ordered to do in the aforesaid judgment." – act subject to the interlocutory constitutional appeal (*acto ocurado*)-.*

A) ARGUMENTS USED TO QUESTION THE ACTIONS OF THE [COURT] WHOSE DECISION IS SUBJECT TO INTERLOCUTORY CONSTITUTIONAL APPEAL:

The appellant (*quejoso*) believes that with the decision subject to interlocutory

constitutional appeal, the court did not properly comply with the rulings of either the Chamber whose decision is subject to interlocutory constitutional appeal, in its decision dated 6 May of the current year, which adjudicated with a final ruling on the *amparo*, or by this Court, in its decision dated 3 May of the current year, when it confirmed the grant of the provisional *amparo* upon the same terms that were decreed at first instance, given that the oral arguments continued, and the order to suspend them as decided was not complied with.

B) CLAIM:

He requested that the [court] whose decision is challenged be ordered to properly comply with the ruling, ordering the immediate suspension of the public bench trial, as well as the enforcement of disciplinary measures, more particularly those provided in paragraphs b) and c) of the pertinent Act concerning the certification of non-compliance and the *ipso facto* removal of the members of the challenged Court from their offices in light of the seriousness of the infringements that they have committed, acting in contempt of what was ordered by a constitutional Court.

II) HEARING GRANTED TO THE [COURT] WHOSE DECISION IS SUBJECT TO INTERLOCUTORY CONSTITUTIONAL APPEAL:

The Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, submitted the *amparo* case file 01019-2013-00030 and reported that Gonzalo Danilo Rodríguez Gálvez, an interested third party, has filed an appeal against the judgment that granted the final *amparo*, on 6 May, 2013.

WHEREAS

-I-

A) The rule of law binds all persons within the territory of the Republic. Pursuant to this fundamental principle, the Constitution provides that civil servants are only depositaries of public authority, [and are] legally responsible for their official conduct, subject to the law and never above it. The Constitutional rule of law operates through the competent authorities that have been delegated the exercise of the national sovereignty. The core aim of this Court is to defend the constitutional order; thus, the decisions that it renders, whether original or confirming those of other courts, "bind the public powers and authorities of the State, and have full power and effect over all." If they are not abided by, the [court] would be tolerating the breach of the constitutional order, and therefore its regulatory act provides for writs of execution of decisions based on the constitutional law [known as the] *Amparo*, Habeas Corpus and Constitutionality Act.

B) The due process established in article 12 of the Constitution of Guatemala, as a right and as a guarantee, includes among its elements –all of which are important– ensuring that criminal proceedings are conducted before a competent, independent and impartial court, especially when statements have been made that raise doubts concerning the likelihood that objectivity and equality will prevail in a trial, and as a result the constitutional *amparo* must meet its preventive and restorative purposes.

C) Article 72 of the pertinent Act provides that if any of the parties concerned believes that during the course of the proceedings and the implementation of what has been decided in the constitutional *amparo* proceedings, the court that takes cognizance of the case does not abide by the law or by decisions contained in the judgment, then [such party] shall have the right to file an interlocutory constitutional appeal (*ocurso de queja*) with the

Constitutional Court in order for the former to rule accordingly, after having heard the [court] whose decision is subject to an *ocurso de queja* within a period of twenty-four hours.

-II-

José Efraín Ríos Montt has brought an interlocutory constitutional appeal against the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court. His challenge questions the lack of implementation: a) of a decision of provisional *amparo* granted by that Chamber, in numeral II of the court order dated 18 April, 2013; and b) of the decision of the aforementioned Chamber, contained in the judgment dated 6 May, 2013, whereby it granted a final *amparo* to the appellant (*ocursante*), to the effect of confirming with a final ruling the suspensive effects of the provisional *amparo* that was granted through the court order dated 18 April, 2013, given that it was stated that “when the final *amparo* is granted, the temporary suspension of the oral arguments is ratified”.

The appellant (*ocursante*) indicates that he filed several motions with the *Amparo* Court of First Instance in order to enable the implementation of the provisional *amparo* that had been granted. However, the [court] whose decision is subject to interlocutory constitutional appeal did not allow for such implementation, given that it avoided adjudicating on this request when it agreed to hear the parties involved in the *amparo* proceedings about a report issued by the [court] whose decision is challenged in the aforesaid proceedings, more particularly, the report issued on 7 May, 2013.

Thereafter, the court whose decision is subject to an interlocutory constitutional appeal (*ocurso de queja*) adopted the decision dated 9 May 2013, whereby it concluded that “*the court whose decision is appealed indeed complied with the orders made by this Chamber [but] in the judgment dated 6 May 2013, more particularly to give leave to proceed with the recusal and abstention motions filed by attorney Francisco García Gudiel and against the members of this Court, just as it had been ordered to do in the aforesaid judgment*”.

In light of the aforesaid, José Efraín Ríos Montt requests that in case the interlocutory constitutional appeal that has been brought is upheld: “*the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes be ordered to proceed without delay with the implementation of the decreed provisional amparo and that it orders the [court] whose decision is appealed to immediately comply with the order to suspend the oral and public hearing*”.

-III-

When conducting the hearing granted in these proceedings, the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, submitted the case file that contains the *amparo*, 01019-2013-00030, and stated that Gonzalo Danilo Rodríguez Gálvez, an interested third party, brought an appeal against the judgment on 6 May 2013, concerning an exemption from the order to pay court costs. The appeal concerned was upheld, and as a result the second-instance ruling in the *amparo* proceedings has not been rendered yet in the *amparo* proceedings underlying this appeal (*ocurso*).

However, the preceding arguments do not prevent us from analyzing whether, as the [court] whose decision is subject to interlocutory constitutional appeal asserts in the decision dated 9 May 2013, the first-instance ruling (rendered on the sixth of the same month and year) has already been complied with.

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This Court gleans the following facts from the case file submitted by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental

Crimes, acting as *Amparo* Court,:

a) José Efraín Ríos Montt brought a constitutional appeal (*amparo*) against the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala. He identified as the challenged act the decision rendered by that court during the hearing held on 19 March 2013. The *amparista* described that, through this decision, the [court] challenged in *amparo* dismissed a motion for reconsideration brought against the refusal to give leave to proceed with a recusal motion filed by his defense attorney against the Presiding Judge and one of the members of that court. The dismissal was based on the principle of expiry of procedural time-limits (*principio de preclusión procesal*) and the provisions of article 344 of the Criminal Procedure Code. The *amparista* affirms that when this dismissal was decided, this also made it possible to support other decisions that were also adopted in that hearing, such as those to remove the defense attorney Francisco García Gudiel from his defense as well as forcing the defense attorneys of the other co-accused to assume his legal defense;

b) in the course of the *amparo* proceedings, the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, rendered **the court order dated 18 April, 2013**, whereby it granted a provisional *amparo* to the *amparo* applicant, [and] in the aforesaid decision the following was specified, as statutory effects of the interim constitutional protection that had been granted:

“a. the suspension of the challenged act consisting of the decision dated 19 March of the current year, rendered in the proceedings number 01076-2011-00015 (second court clerk) adopted by the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes, which dismisses the motion for reconsideration and confirms the decision of that same date ordering that the defense attorney Francisco García Gudiel be removed from the petitioner’s defense;

*b. **The provisional suspension of the public bench trial in the aforementioned proceedings until these proceedings are at the adjudication stage.**”* The boldface type does not appear in the original text of the aforementioned decision, but it is useful to highlight sentences in order to stress, within its due context, that the provisional *amparo* granted by the court order dated 18 April, 2013 has **primarily suspensive effects** in respect of the criminal proceedings (in this case, of the public bench trial) underlying the *amparo* proceedings, which effects, in light of the nature of such interim protection, this Court clarifies should have been maintained: i) until such protection was revoked, whether by the same court that granted it or by this Court acting on appeal; ii) until such time as the first-instance ruling rendered in the constitutional proceedings of *amparo* became final and non-appealable; and iii) until such time as the second-instance ruling, if the judgment is appealed, became final and non-appealable;

c) notice of the court order whereby the provisional *amparo* was granted was given to the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala **on 19 April, 2013**. This Court believes it is important to specify that date in this court order, given that it was after that day that the criminal proceedings should have been provisionally suspended, given that due to the legal nature thereof, the decision to grant the provisional *amparo* is **immediately effective**. Therefore, this Court believes that it is clear that the provisional stay of proceedings ordered in numeral II of the court order dated 18 April, 2013 should have been complied with starting on the 19 of the same month and year, even if the decision to grant the provisional *amparo* had been appealed. It is worth noting that the public bench trial in the underlying criminal proceedings was in fact suspended as from such date, but that

suspension did not result from compliance with the provisional *amparo* that was granted by the decision dated the 18 of the same month and year, but rather as a *motu proprio* decision of the court whose decision is challenged “*pending the decision of the Constitutional Court*” in respect of what had been decided by the First High Risk Criminal Court of First Instance “A” for Criminal Justice, Drug Trafficking and Environmental Crimes, which had decided to annul some procedural steps of the criminal proceedings underlying these *amparo* proceedings. Ignoring the order to suspend the proceedings adopted when the provisional *amparo* was granted, on 30 April, 2013, the [court] whose decision is challenged held a hearing during which it decided, among other items, to resume the public bench trial. Here the Court points out that if the order to suspend the proceedings had been complied with on the date stated above, it would have allowed for the following: i) if that decision had been revoked on second instance, then the suspensive effect ordered in numeral II of the court order dated 18 April, 2013 would have ceased, and thus, the public bench trial suspended pursuant to letter b. of such numeral could have validly continued from the date when the [court] whose decision is challenged was notified of the reversal of the provisional *amparo*; and ii) if this order had been confirmed –as it was, in fact, by the court order dated 3 May, 2013, issued by this Court in the joined cases 1563/1573-2013– there would have been no need to annul any court proceedings if they had been carried out in breach of a provisional stay of proceedings that included both the challenged act and the court proceedings wherein that act was made;

d) in examining the appeal of the provisional *amparo* that was granted, this Court, as previously stated, by court order dated 3 May, 2013 (Joined cases 1563/1573-2013), confirmed the aforesaid decision “*upon the same terms* [i.e., **suspending** both the challenged act and the public bench trial in the aforementioned criminal proceedings]³ *as ordered on first instance.*” With this last decision, **the decision to suspend both the challenged act and the continuity of the underlying criminal proceedings within which that act was made, was duly supported;** and

e) from the case file submitted by the [court] whose decision is subject to interlocutory constitutional appeal, we can also determine the existence of three reports that the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala submitted to the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes acting as *Amparo* Court. These three reports are dated 30 April and 7 and 8 of May, all of them of 2013. In the first report, the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala expressly admits that it has not complied with the ruling of the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, under numeral II of the court order dated 18 April, 2013 (see page 211, of part II of the *amparo* case file submitted by the [court] whose decision is subject to interlocutory constitutional appeal), and puts forward arguments as to why it did not implement this provisional *amparo*. In the aforementioned second and third reports, the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala -in both reports- expressly refers to a decision rendered by that same court during a hearing held on 30 April, 2013, whereby it dismissed a motion for reconsideration, and when specifying the grounds for its decision, it states that it has not complied with what was decided in numeral II of the decision dated 18 April, 2013, that granted the provisional *amparo* (See pages 286 and 341 of part II of the

³ Translator’s note: text within brackets appears in the Spanish original.

amparo case file submitted by the [court] whose decision is subject to interlocutory constitutional appeal).

As may be inferred from the above, the common denominator of the three reports is that the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala, admits to the [court] whose decision is subject to interlocutory constitutional appeal **that it has not complied with what was ordered by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, in paragraph b of numeral II of the court order dated 18 April, 2013**, later confirmed by this Court by court order dated 3 May, 2013 (Joined cases 1563/1573-2013), i.e., in particular, **to suspend the public bench trial in the criminal proceedings** wherein the challenged act was made, which, in compliance with this order, should have been done from 19 April, 2013.

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Following this line of thought, it should be emphasized that the constitutional guarantee of due process requires the effectiveness of court decisions (by means of due enforcement). Pursuant to article 72 of the *Amparo*, Habeas Corpus and Constitutionality Act, this Court must ensure that the courts, both when conducting *amparo* proceedings and when enforcing what is decided in those proceedings, abide by the applicable statutory provisions and ensure that decisions are given effect as aforesaid. If this does not happen, the Constitutional Court must enable the due implementation of the aforementioned decisions by means of an interlocutory constitutional appeal. As mentioned in this court order's narrative recitals, this is even more relevant when those decisions have been supported by this court on first instance. Thus, in upholding an interlocutory constitutional appeal denouncing lack of implementation, such as the one being discussed herein, the intended goal is that the provisions of article 185 of the *Amparo*, Habeas Corpus and Constitutionality Act are not rendered ineffective by whimsical interpretations of this Court's decisions made by [lower] courts.

In the case under consideration, this Court has determined that, pursuant to the express statements made by the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala in the reports dated 30 April and the 7 and 8 of May, all of them of 2013, [which were] submitted to the *Amparo* Court of First Instance, the trial court challenged in *amparo* clearly admitted that it had not complied with a provisional *amparo* decision, rendered through the court order dated 18 April, 2013 by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, a decision that had even been confirmed by this Court "*upon the same terms* [suspending the oral arguments public hearing]"⁴ in which the former was granted. (*Cf. court* order dated 3 May, 2013, issued by this Court in joined cases 1563/1573-2013). In those reports it is stated that instead of abiding by what was ordered, [i.e.] implementing the provisional *amparo* that had been granted, it proceeded with the public bench trial in the underlying criminal proceedings. This improper continuation, of which this Court is aware by its own cognizance, entailed the continuation of the suspended public bench trial as well as the taking of subsequent procedural steps that also gave rise to new challenges, all of which is detrimental to the legal certainty of the criminal proceedings concerned, and does nothing to assist in complying with the provisions of article 203 of the Constitution: to deliver prompt and proper justice. Hence, the importance of effectively complying with provisional *amparo* decisions, not according to the whimsical criteria of whoever is legally bound to

⁴Translator's note: text within brackets appears in the Spanish original.

comply therewith, but rather in strict compliance therewith, by following the guidelines of the court that rendered it [*sic*].

The latter is pertinent in this particular case, in which the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala tried to justify its non-compliance on the basis of this Court's rulings in two court orders dated 22 and 23 April, both of 2013 (Cases 1248-2013 and 1326-2013, respectively). In one of them –which is the one that interests us for purposes of this case– the provisional *amparo* had been rejected in those *amparo* proceedings (see decision dated 26 March, 2013, rendered by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court), a decision which was revoked by this Court through the aforementioned court order dated 22 April, 2013, to the effect that the [court] whose decision is challenged was ordered to repeat, within an absolute deadline, the proceedings concerning what had been decided in the challenged act, in accordance with due process and the right to present a defense. The court order dated 23 April, 2013 (Case 1326-2013) decided in the same way (with in respect to a different challenged act). However, it should be emphasized that for this court, proper compliance with those court orders did not involve ignoring the order to suspend the public bench trial in the underlying criminal proceedings, in particular because:

a) when implementing those court orders, it should have been taken into account that the reinstatement of the defense attorney, which was requested at the public bench trial, could very well have been carried out without the need to continue that trial; rather, it could have been accomplished by rendering a decision that recommenced the aforementioned trial, allowing the presence of the *amparo* applicant's trusted defense attorney once [the trial] was resumed, consequently rendering ineffective (in that same decision) the orders for him to leave the courtroom where the trial was taking place as well as those addressed to the defense attorneys of the other co-accused requiring them to assume the legal defense of the *amparo* applicant; and

b) the aforementioned order to suspend the proceedings, which was a consequence of a decision made by the *Amparo* Court of First Instance other than the one that had been revoked, and which on 19 April, 2013 had not been revoked, either by the court below or by this court.

All of the above shows the weakness of the legal grounds offered to justify non-compliance with the provisional *amparo* granted by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, by court order dated 18 April, 2013.

-VI-

Due process is important in determining the relevance or lack thereof of the decisions of the [court] whose decision is subject to interlocutory constitutional appeal contained in numeral III of the court order dated 9 May, 2013, wherein it is provided that “*the [court] whose decision is challenged indeed complied with the orders of this Chamber [but] in the judgment dated 6 May of 2013, more particularly to give leave to proceed with the recusal and abstention motions filed by attorney Francisco García Gudiel and against the members of this Court, just as it had been ordered to do in the aforesaid judgment.*”

After analyzing the report issued by the [court] challenged in *amparo*, dated 8 May, 2013, this Court has been able to determine that it also did not comply with what was ordered in the aforementioned judgment dated 6 May of such year. This assertion is based on the following reasons:

a) in that ruling it was stated that granting the constitutional protection through *amparo* involved the following: that the court challenged in *amparo* must “*give leave to*

proceed with the recusal and abstention motions filed by the aforesaid attorney and against the members (sic) of that Trial Court that were also mentioned pursuant to the provisions of article 150 bis of the Criminal Procedure Code, [and] to continue accordingly and pursuant to article 67 del Criminal Procedure Code” (see the reverse of page 268 of part II of the *amparo* case file submitted by the [court] whose decision is subject to interlocutory constitutional appeal); and

b) in the aforementioned report, the court challenged in *amparo* states that it rendered a decision during the hearing held on 18 May, 2013, by virtue of which it alleges, in its narrative recitals, having dismissed that recusal motion outright – i.e., without granting the hearings referred to in article 150*bis* of the Code of Criminal Procedure – and it also affirms, among other things, that the public bench trial had to continue, although this Court has been able to determine that in the aforementioned judgment it was clearly specified that "*the public bench trial is suspended again until such recusal is heard in accordance with the procedure and it is adjudicated upon pursuant to the law*" (boldface does not appear in original text). It is further stated in the narrative recitals of the decision dated 8 May, 2013, that "*the temporary suspension of the Oral Arguments [was] meant to implement the decisions dated April 22 and 23, 2013 rendered by the Constitutional Court, compliance with which occurred at the hearing dated April 30, 2013,*" and on that basis it ruled [as follows]: "*1) There has been compliance with the order rendered by the Third Chamber of the Court of Appeals for Criminal Justice, (sic) acting as Amparo Court, by granting attorney GARCIA GUDIEL leave to file a recusal motion*", (cf. pages 332 through 334 of Part II of the *amparo* case file submitted by the [court] whose decision is subject to interlocutory constitutional appeal), thus ignoring [the fact] that, according to the findings of this Court after having listened to the audio recording of the hearing held on 19 March, 2013, the recusal motion referred to in the *amparo* judgment was filed on that same date (19 March, 2013), such that there was no obligation to restate it; much to the contrary, what should have been done was to give leave to proceed with that recusal motion, then to hold the respective hearings and [finally] to adjudicate thereupon pursuant to the provisions of articles 67 and 150*bis* of the Code of Criminal Procedure.

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In light of the foregoing, it is clear to this Court that the [court] whose decision is subject to interlocutory constitutional appeal has not ensured compliance (proper implementation of) with its own decisions. As a result, we must uphold this interlocutory constitutional appeal, and as a statutory effect thereof, to invalidate numeral III of the decision dated 9 May, 2013, whereby the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, adjudicated on the proper compliance with the judgment rendered by that court on 6 of May, 2013; and to order said Chamber to issue a new decision within **24 hours** after being notified of this court order, replacing the decision that has been set aside, whereby, on the basis of the provisions of article 55 of the *Amparo*, Habeas Corpus and Constitutionality Act, it adopts the following measures for proper compliance with the provisional *amparo* granted by such court:

a) annulment of all the proceedings conducted during the bench trial stage of the criminal proceedings underlying the *amparo* proceedings after 19 April, 2013, thereby annulling all actions in the criminal proceedings after such date, given that it was the date on which the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala was notified of the decision to suspend such criminal proceedings, contained in the court order dated 18 April, 2013, issued by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, [and] confirmed by the court order

dated 3 May, 2013, issued by this Court in joined cases 1563/1573-2013;

b) ordering the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala to issue a decision whereby, in order to replace the annulled procedural steps and [to guarantee] the due legal certainty of the aforementioned criminal proceedings, it decrees the provisional suspension of those criminal proceedings, until such time as the second-instance ruling rendered in the constitutional *amparo* proceedings brought by José Efraín Ríos Montt becomes final and non-appealable, sending the pertinent notice [to the aforesaid court]; and

c) ordering the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala, under threat of penalty, to fully comply with what has been decided, within **24 hours** after receipt by that court of the notice mentioned in the preceding numeral, the aforesaid court being cautioned that if it does not comply with this order within such time-limit, the members of the court shall be liable under the provisions of article 50(b) of the *Amparo*, Habeas Corpus and Constitutionality Act, without prejudice to the civil and criminal liability that may derive from such non-compliance.

APPLICABLE LAW

The articles quoted above, and [articles] 140, 141, 152, 153, 154, 204, 265, 268 and 272 of the Constitution; 72, 149, 163 and 185 of the *Amparo*, Habeas Corpus and Constitutionality Act.

NOW THEREFORE

The Constitutional Court, on the basis of the preceding considerations and of the statutes cited, hereby rules:

- I. ***Upholding*** the interlocutory constitutional appeal brought by José Efraín Ríos Montt against the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court.
- II. Setting aside numeral III of the decision dated 9 May, 2013, whereby the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, adjudicated on the proper compliance with the judgment rendered by this court on 6 May, 2013.
- III. Ordering the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, to issue a decision within 24 hours after being notified of this court order, replacing numeral III which has been set aside, whereby, on the basis of the provisions of article 55 of the *Amparo*, Habeas Corpus and Constitutionality Act, it adopts the following measures for proper compliance with the provisional *amparo* granted by that Chamber through the court order dated 18 April, 2013, the grant of which was confirmed by this Court by court order dated 3 May, 2013 (Joined cases 1563-2013 and 1573-2013):

a) annulling all the proceedings conducted during the bench trial stage of the criminal proceedings underlying the *amparo* proceedings after 19 April, 2013, annulling all actions taken during the proceeding after such date, given that it was the date on which the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala was notified of the decision to suspend those criminal proceedings, contained in the court order dated 18 April, 2013, issued by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and

Environmental Crimes, acting as *Amparo* Court, [and] confirmed by the court order dated 3 May, 2013, issued by this Court in the joined cases 1563/1573-2013;

b) ordering the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala to issue a decision in order to replace the annulled procedural steps and [to guarantee] the due legal certainty of the aforementioned criminal proceedings, it decrees the provisional suspension of such criminal proceedings until such time as the second-instance ruling rendered in the constitutional *amparo* proceedings brought by José Efraín Ríos Montt becomes final and non-appealable, sending the pertinent notice [to the aforesaid court];

c) ordering the First Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala, under threat of penalty, to fully comply with what has been decided, within **24 hours** after receipt by that court of the notice mentioned in the preceding numeral, that court being cautioned that if it does not comply with this order within the aforesaid time-limit, the members of that court shall be liable under the provisions article 50(b) of the *Amparo*, Habeas Corpus and Constitutionality Act, without prejudice to the civil and criminal liability that may derive from such non-compliance.

- IV. Within five days of being notified of this court order, the [court] whose decision is subject to interlocutory constitutional appeal must submit to this Court a detailed report regarding effective compliance with what has been decided herein.
- V. The Constitutional Court reserves the right to adopt the pertinent measures for the proper enforcement of this decision, based on articles 50, 53, 54 and 55 of the *Amparo*, Habeas Corpus and Constitutionality Act.
- VI. Notice hereof is to be served to the appellant (*ocursante*), to the [court] whose decision is subject to interlocutory constitutional appeal, and to the other parties involved in the *amparo* proceedings. A certificate of this decision and of the record of the case is to be sent to the originating Court in due course.

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HÉCTOR HUGO PÉREZ AGUILERA
PRESIDENT

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ROBERTO MOLINA BARRETO
JUSTICE

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GLORIA PATRICIA PORRAS ESCOBAR
JUSTICE
DISSENTING OPINION

[handwritten signature]
ALEJANDRO MALDONADO AGUIRRE
JUSTICE

[handwritten signature]
MAURO RODERICO CHACÓN CORADO
JUSTICE
DISSENTING OPINION

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DISSENTING OPINION OF JUSTICE
GLORIA PATRICIA PORRAS ESCOBAR

I dissent from the decision rendered by this Court on 20 May, 2013, in the aforesaid case file, which upheld the interlocutory constitutional appeal (*ocurso en queja*) brought by José Efraín Ríos Montt against the [decision of the] Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala, within the *amparo* that the appellant (*quejoso*) brought against the First High Risk Criminal Court of First Instance “A” for Criminal Justice, Drug Trafficking and Environmental Crimes, for the following reasons:

A. ACTIONS OF THE CONSTITUTIONAL COURT IN CONNECTION WITH THE INTERLOCUTORY APPEAL (*OCURSO*).

1. One of the fundamental governing principles of every court of law, which is also applicable within the constitutional justice system, is [the requirement] of congruence between the decision and the petitioners’ claim. This principle in no way contradicts the provisions of article 42 of the *Amparo, Habeas Corpus and Constitutionality Act (Ley de Amparo, Exhibición Personal y de Constitucionalidad)*, which provides that the court must examine the facts, evidence and proceedings, as well as everything that is formally, really and objectively pertinent, examining all the applicable legal grounds, regardless of whether they have been alleged by the parties or not. Therefore, this Court can expand the legal analysis beyond what has been invoked by the parties, on the basis of the principle *iura novit curia [sic]*; however, at no point is the Court given the right to modify *sua sponte* the facts in issue and the grievances felt by the petitioner.
2. In the case at hand, the appellant (*ocursante*) challenged the *Amparo* Court of First Instance, emphasizing the non-compliance with the order issued by the aforesaid court on 18 April, 2013, whereby it granted the provisional *amparo*. The appellant (*ocursante*) focuses his interlocutory constitutional appeal on the fact that the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes, acting as *Amparo* Court, did not adjudicate on his motions for proper implementation concerning the aforesaid provisional *amparo*; however, [the justices] who uphold this interlocutory constitutional appeal by majority vote, create *sua sponte* a new interlocutory constitutional appeal consisting of the decision dated 9 May, 2013, whereby the aforesaid [court] ruled that the judgment dated 6 May of the same year had indeed been properly implemented. The operative part of the decision from which I dissent goes so far as to annul numeral III of the aforesaid decision, even though this was not the subject-matter of the interlocutory constitutional appeal.
3. The decision assumes actions that do not match the record of the proceedings, given that when rendering this decision it accepts the *amparista’s* tendentious claim that identifies as the challenged act the decision that dismissed a motion for reconsideration brought against the refusal to give leave to proceed with a recusal motion, filed by his defense attorney; which is not true, given that in the audio recording of the pertinent hearing one can verify that the motion for reconsideration was only filed against the decision of the trial court ordering the removal of the defense attorney of the accused

- from the courtroom, not against the decision concerning the recusal.
4. I must point out that the non-compliance attributed to the Chamber is based on an ambiguous and impromptu interpretation by [the justices] who adopt by majority vote the decision from which I dissent. In its decision dated 22 April, 2013, this Court only ordered the corresponding Trial Court to “repeat the challenged act in accordance with due process and the right to present a defense.” Such decision was adopted by this Court by majority vote, and it is obvious that it is for the Ordinary Court that tries the criminal proceedings to implement the order given by this Court; however, in the decision from which I dissent, [the Justices] who adopt this decision provide a belated and impromptu interpretation that is different from what was argued when the original decision was issued by the court sitting en banc. In this interpretation, which I do not share, it is stated that when complying with the aforementioned decision the Trial Court should have taken into account that the reinstatement of the defense attorney requested at the public bench trial could have been carried out without the need to continue that trial, but rather, it could have been accomplished by issuing a (written) decision whereby the defense attorney was reinstated to his position when the trial was resumed. This interpretation is not only late and untimely, in light of the fact that the decisions of the Constitutional Court must be clear and accurate so that they are self-explanatory; but also contradicts what was previously ordered, namely, to “repeat [the act] in accordance with due process.” In accordance with the due process rule provided in the Criminal Procedure Code, all motions and decisions must be made orally when the criminal proceedings are at the trial or oral argument stage, and therefore it was imperative that the reinstatement of the defense attorney and the recusal motion be made at the oral hearings, which, by their very nature, are part of the trial. In so doing, I believe that the Court is rendering a decision that affects the [principle of] legality that should govern the act, and that it is consequently detrimental to [the right to] justice, which is a fundamental right enshrined in the Constitution.
 5. I must also add that the interlocutory constitutional appeal of the appellant (*ocursante*) is based upon the apparent lack of compliance by the *Amparo* Court of First Instance, as to adjudicating on his various motions for implementation of the aforementioned provisional *amparo*. However, the case record shows that the aforesaid Court, in order to comply with what was ordered, requested a report from this Court on 30 April, 2013, seeking to determine whether the aforesaid decision had been confirmed or revoked. In spite of the fact that this Court failed to submit the requested report, it now grants the interlocutory constitutional appeal, [thereby] ordering the suspension of the oral arguments that have already been concluded [as well as] the annulment of the proceedings, when the appropriate action would have been to submit the report and to have the Chamber ensure that the provisional *amparo* had been properly complied with, pursuant to article 55 of the Amparo, Habeas Corpus and Constitutionality Act.

B. THE GRIEVANCE NO LONGER EXISTS GIVEN THAT IT WAS REPAIRED BY THE PROVISIONAL AMPARO GRANTED IN CASE FILE 1248-2013.

1. The constitutional guarantee of *amparo* aims to protect individuals against threatened violations of their rights, or at restoring [such rights] if the violation has already occurred, and therefore, in order for [the *amparo*] to be granted, the act that is identified as the cause of the grievance must be examined, and only in the event that the threat or violation justifies immediate treatment does the pertinent [A]ct provide for the provisional *amparo* to be granted, as a means of suspending the offending action in order to prevent the violation or to restore the rights that have been violated.

2. In the case *sub judice*, granting the provisional *amparo* whose improper implementation is being denounced by means of this interlocutory constitutional appeal, was essentially aimed at restoring the appellant's rights that he deemed violated and which he stated in the challenged action, but these rights had already been duly restored by the Trial court whose decisions are being challenged. This is shown by the notice dated 2 May, 2013 in which [the trial court] informs this Court of the hearing held on 30 April of the same year, wherein the attorney Francisco Garcia Gudiel was reinstated as the defense attorney representing the accused, José Efraín Ríos Montt; and by the notice dated 8 May, 2013 whereby this Court is informed of the contents of the hearing of the same date, wherein [the trial court] ruled on the recusal motion filed by the appellants; all of which was done in compliance with what was ordered by this Court in case files 1248-2013 and 1326-2013, which in turn was consistent with the provisional *amparo* granted by the *Amparo* Court of First Instance on 18 April, 2013, given that the challenged act was the same in the *amparo* proceedings within which the provisional *amparo* whose implementation is now attempted was granted, and in the *amparos* tried by this Court in the aforementioned case files. **All of the above shows that the *amparo* appellant was restored to the affected legal positions and that the grievance that he alleged that the challenged act was causing him had ceased. In the light of the foregoing, I believe that this Court goes too far in granting the interlocutory constitutional appeal, considering that what constitutional justice should guarantee is the restoration of the violated right, something which has already occurred as a result of the interim protection granted by this Court in the aforementioned case files. The decision from which I dissent abandons all procedural logic, given that if the requested *amparo* sought a) reinstatement of the defense attorney, and b) leave to proceed with the recusal motion; [then] it makes no sense for the trial court to suspend the trial once these acts had been carried out and the claimed rights had been restored, given that this was not the main goal of the *amparo*.** Additionally one should note that the provisional protection decreed by the lower Court by decision dated 18 April, 2013 ordered the suspension of the underlying criminal proceedings, **until those proceedings (*amparo*) were at the adjudication stage**, which occurred at the end of the period granted to the parties for the second hearing within the *amparo* proceedings.
3. Furthermore, it is recorded in the *amparo* case file that the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala, acting as *Amparo* Court, **entered a judgment** on 6 May, 2013, granting the final *amparo*, and the operative part of which stated, among other things: “ ... *this ruling granting a final amparo ratifies the temporary suspension of the oral arguments until the latter is properly implemented pursuant to the considerations herein...*” and in the corresponding part of narrative recital IV, it pointed out that: “...*Granting constitutional protection by means of amparo entails the following: That the court whose decision has been appealed immediately proceed to reinstate the chosen attorney, the lawyer Francisco García Gudiel, as legal counsel of the accused José Efraín Ríos Montt and to grant them [sic] all the rights and duties inherent to the position as set forth in the Constitution of Guatemala, and in the same decision in keeping with what is decided herein, that is, to give leave to proceed with the recusal and abstention motions filed by the aforementioned attorney...*” The foregoing shows that, having fully analyzed the aforesaid judgment, the suspension of the oral arguments would be maintained until the grievance had been repaired, i.e., when the reinstatement of the defense attorney of the accused José Efraín Ríos Montt had been

argued and ruled upon, and the recusal and abstention motions brought by him were processed; all of which has already been done by the First High Risk Criminal Court of First Instance for Criminal Justice, Drug Trafficking and Environmental Crimes, as is shown by the reports submitted by this court to the Chamber whose decision is subject to the interlocutory constitutional appeal, dated 7 and 8 of May, 2013.

4. On the other hand, as can be deduced from the case record, this judgment was only appealed by the attorney Danilo Rodríguez Gálvez, who stated in his appellate brief: “...*I agree with the judgment rendered insofar as it has granted the requested constitutional protection and other requests made therein in connection with said protection, in its operative part, and the suspension of the oral arguments ordered by this Constitutional Court. However I disagree with what is ordered in numeral V) of the operative part, given that there is no award of costs and reference is made to the provisions of article 48 of the Amparo, Habeas Corpus and Constitutionality Act (...) In light of the foregoing, I hereby bring this appeal against numeral V) of the judgment’s operative part...*” Consequently, it is undeniable that the only part of the judgment that has not become final and non-appealable is numeral V) of the operative part, due to the fact that it has been challenged and because it is the only item on which a decision by this Court is still pending. This means that since the rest of the aforementioned judgment has become final and non-appealable, all the parties consented to the fact that the reinstatement of the defense attorney and the recusal proceedings [were the only] two acts that the Court needed to implement in order to restore the rights of the *amparista*; and, according to this now-final and non-appealable judgment, the oral arguments should have been suspended until implementation thereof; i.e., until the two aforementioned acts were carried out. Once it had been verified that those acts had already been implemented and that the rights of the *amparista* have been restored in the hearings held on 30 April and 8 May of this year, the suspension of the trial was rendered pointless after their implementation, and therefore I believe that this Court has no grounds to disrupt the course of ordinary justice [by means of] a senseless provisional *amparo*, given that instead of repairing the claimed violations, it imposes an [undue] burden on the victims.⁵ Additionally, the court record to which this Court has access shows that no procedural steps were taken between 19 April, 2013, the date of notification of the provisional *amparo* for which implementation is being requested, and 30 April of the same year, the date when the court reinstated the defense attorney to his position, and therefore the trial was suspended. It’s irrelevant whether that stay of proceedings was decided on another basis or not, because the aim of the constitutional justice system is to redress the wrong, which was obviously accomplished with the implementation of the provisional *amparo* previously ordered by this Court.
5. Based on the last part of the preceding numeral, we can conclude that the Constitutional Court, when deciding on an annulment and stay of the proceedings of the Trial Court, is depriving the victims of their constitutional right to justice, given that the aforesaid Trial Court, after having implemented the provisional *amparos* that had been granted in the various aforementioned *amparo* proceedings, was entitled to continue the trial, which has already been concluded with a first-instance judgment, and a hearing had already been scheduled for providing redress to the victims who resorted to the criminal justice system. This is the spirit behind article 2 of the Constitution, which sets forth the State’s duty to guarantee to its population, among

⁵ I made similar statements in my dissenting opinion in the joined files 1553-2013 and 1573-2013, dated May 3, 2013.

other rights, [the right to] justice and security. The Constitutional Court itself has acknowledged this, among others, in the judgment dated 20 November, 2007, case file 235-2007, and when expounding on such article 2 has stated that “*The State has a duty to guarantee justice for the inhabitants of the Republic, and must adopt any measures that it may deem appropriate in order to do so, and in accordance with the prevailing circumstances and needs. The foregoing provides legal certainty, which consists of the confidence of the citizens in the legal system within the Rule of Law.*”

6. Lastly, based on this decision whereby the Court decides by majority vote to order the stay of proceedings and the annulment of all proceedings as from 19 April, 2013, it is inconsistent with what was decided by this Court by court orders dated 22 and 23 April of the same year, rendered in case files 1248-2013 and 1326-2013, which were duly implemented on 30 April of the current year by the [court] whose decision is challenged, and it is therefore clear that the purpose for filing the *amparo* was not the suspension of the trial, but rather to redress the grievance consisting of the reinstatement of the attorney to his position, an action which this Court is ordering to have annulled in the decision from which I dissent, in an unprecedented decision; thereby raising the failure to suspend the oral arguments to the status of independent grievance and giving it preference over the grievance that was denounced in the *amparo*.

C. IT IS NOT APPROPRIATE TO ANNUL PROCEDURAL ACTS THROUGH AN INTERLOCUTORY CONSTITUTIONAL APPEAL, GIVEN THAT THERE ARE REMEDIES FOR THAT PURPOSE UNDER ORDINARY PROCEDURES.

I believe that this Court went too far when it annulled procedural acts within the underlying criminal proceedings, given that with that decision it encroaches upon the jurisdiction of the ordinary justice system, given that the latter can, through the remedies provided for in the relevant Act, annul proceedings in case of detecting mistakes in the conduct of the oral arguments that justify [such annulment], and recourse to the constitutional [system of appeal] is available only after having exhausted all the respective remedies, given the latter’s subsidiary and extraordinary nature. If the parties believe that there were procedural defects during the course of the proceedings, they may use ordinary appeals to enforce their rights, and it is for the second-instance court to verify whether the annulment of the proceedings is justified or not.

D. CONCERNING THE PROPER IMPLEMENTATION OF THE JUDGMENT:

The case record shows that prior to filing an interlocutory constitutional appeal, the appellant addressed the *Amparo* Court of First Instance to request the proper implementation of the protection that had been granted, and that with this purpose in mind the aforesaid Court requested the obligated [court] to submit the corresponding reports, having concluded in its decision dated 9 May, 2013: “...III) *After analyzing the information provided in the two reports submitted by the aforementioned Court and the arguments presented by the parties, we the members of the court conclude that the [court] whose decision is challenged indeed complied with the orders made by this Chamber in the judgment dated 6 May 2013, more particularly, to give leave to proceed with the recusal and abstention motions filed by attorney Francisco García Gudiel and against the members of this Court, just as it was ordered to do in the aforesaid judgment...*” In my opinion, this reinforces what I stressed in section A) of this dissenting opinion, given that the *Amparo* Court of First Instance itself found that

there was indeed a restoration of the rights that were claimed to have been violated, and as a result I find it inexplicable why, without any reasons whatsoever, [this court] should presume to suspend proceedings in which there are no longer any violated rights.

E. THE CONFLICT BETWEEN THE DECISIONS THAT GRANTED THE PROVISIONAL *AMPARO* IN RESPECT OF THE SAME CHALLENGED ACT:

As a result of the *amparo* action brought by Efraín Ríos Montt, and which was tried on first instance by the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala, within the case file identified under number 1019-2013-00030, two decisions were rendered on the requested provisional *amparo*: i) the court order dated 22 April, 2013, rendered in case file 1248-2013, whereby the challenged act was ordered to be suspended and repeated in accordance with due process and the right to present a defense, [but] without suspending the oral arguments, and; ii) the decision dated 18 April, 2013, rendered by the *Amparo* Court of First Instance ([and] confirmed by this Court on the third of May of the same year in the joined cases 1563-2013 and 1573-2013), that ordered the suspension of the challenged act and the provisional suspension of the public bench trial until those proceedings were at the adjudication stage. Those decisions, which had different effects, forced the [court] whose decision is challenged to decide which one to fully comply with, [and it] decided to give preference to the decision by this Court in case file 1248-2013, as aforesaid, given that the Constitutional Court is the highest ranking court in the constitutional justice system, and [also] taking into consideration that both decisions originated from the same proceedings and had the same purpose. The aforesaid action, in my opinion, is correct given that it is consistent with the provisions of articles 268 and 272, paragraph c) of the Constitution and with 163, paragraph c) of the Amparo, Habeas Corpus and Constitutionality Act.

Therefore the [court] whose decision is challenged acted within the scope of its powers, using an appropriate interpretation of the institutional hierarchy and of the decisions within the constitutional justice system; and its decision to give preference to the decision of this Court is constitutionally sound, not only because of the institutional hierarchy, but also because the grievance that both decisions redressed had already been redressed with the implementation of the decisions of this Court. In light of the foregoing, I believe that the [court] whose decision is challenged correctly interpreted the right to justice that is enshrined in the Constitution, to which both the accused and the victims are entitled, in accordance with the principles governing the criminal proceedings, including those of due process, the preemptory nature and continuity of the proceedings and, above all, by adhering to articles 3, 4, 13, 16, 19 and 21 of the Criminal Procedure Code.

For all the foregoing reasons, I completely dissent from the decision of those that today decide by a majority vote to implement a senseless act by granting an interlocutory constitutional appeal whose effects are devastating for the ordinary justice system, but even more so for the victims that have placed their trust in such system; thus causing the unjustified annulment of procedural steps taken in legal proceedings after the redress of the grievances requested in the *amparo* proceedings had already been provided.

Guatemala, May 20, 2013.

In exercise of my powers, I request that this dissenting opinion be reported together with the judgment.

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GLORIA PATRICIA PORRAS ESCOBAR
JUSTICE

CONSTITUTIONAL COURT
REPUBLIC OF GUATEMALA, C.A.

CASE FILE 1904-2013
CONSTITUTIONAL COURT
Guatemala, on 20 May, 2013.

DISSENTING OPINION OF JUSTICE
MAURO RODERICO CHACÓN CORADO

I wish to express my disagreement with the court order rendered on 20 May, 2013 by the Constitutional Court in the aforementioned case file, whereby it **upholds the interlocutory constitutional appeal brought by José Efraín Ríos Montt** against the Third Chamber of the Court of Appeals for Criminal Justice, Drug Trafficking and Environmental Crimes of the department of Guatemala, acting as *Amparo* Court, for which purpose I believe it is necessary to provide the following reasoning:

- A) The interlocutory constitutional appeal that is upheld, as a result of which it has been ordered to annul procedural steps of the criminal proceedings underlying the *amparo* from which the ordered remedy derives, is no more than one procedural issue among many in the constitutional proceedings initiated by the now appellant (*quejoso*) against the Trial Court that tried the criminal proceedings brought against him. As expressly stated in the court order from which I dissent, such constitutional proceedings came to an end when the respective judgment was rendered (dated 6 May of the current year, i.e., prior to the date of the application for proper implementation brought by the now appellant (*ocursante*), which was filed 7 May), a decision which has been appealed and which will eventually be examined by this Court on appeal.
- B) The court order upholding the interlocutory constitutional appeal is based on the right to due process, which is guaranteed by the Constitution, insofar as it requires the effectiveness of court decisions, i.e., the implementation thereof pursuant to the precise terms upon which they were rendered. In light of the foregoing, **without questioning the requirement that all judicial decisions be properly implemented by the authorities and individuals to whom [such decisions] are addressed, which is a fundamental requirement of the Constitutional Rule of Law**, we must note that the effects given to the decision exceed the stated purpose. Thus, even accepting that the [court] whose decision is challenged did not comply with the provisional *amparo* granted at first instance and confirmed by this Court, the lack of proportionality of the decision to annul procedural steps in the criminal proceedings underlying the *amparo* (in which the corresponding judgment has even been entered) is clearly an effect deriving from such non-compliance. In any case, such non-compliance, far from causing the annulment of procedural steps, which causes a direct harm to the parties involved in the ordinary proceedings, should have the pertinent consequences for whoever has failed to comply with the order issued by the court; in other words, failure to implement the provisional *amparo* that had been granted should not lead to consequences that worsen the situation of those appearing as parties in the underlying criminal proceedings; instead, the only measure consistent with the purposes of the *Amparo*, Habeas Corpus and Constitutionality Act, and especially with the principle governing constitutional guarantee proceedings, is to decide to enforce the consequences that the legal system itself provides for such cases. In fact, once the non-compliance of the [court] whose decision is challenged has been determined, the application of such consequences, which may even be disciplinary in nature, in keeping with the applicable laws, must be decided upon by the *Amparo* Court of First Instance, in its capacity as the competent [court] for the implementation of what has been decided (article 18 of

Resolution 4-89 of this Court), including, if applicable, certification of non-compliance where appropriate if it is found that an unlawful act has been committed (articles 50, 51 and 54 of the *Amparo*, Habeas Corpus and Constitutionality Act).

- C) **Therefore**, while reiterating that the guarantee of the constitutional rights and, more importantly, the population's confidence in the justice system [both] require full effectiveness of and compliance with court decisions, I believe that such non-compliance cannot lead to consequences that are even more burdensome for [the person or persons] who have suffered such non-compliance; on the contrary, the necessary confidence in the justice system, with the accompanying prevalence of the principle of legal certainty, will be strengthened by the implementation of the effects deriving from such non-compliance, which may even have a preventive effect on potential instances of non-compliance with future judicial decisions, given the adverse effect (in light of its disciplinary nature) for those that fail to comply with what was decided in this particular case, even if we are dealing with a [court].
- D) The decision from which I dissent justifies the onerous effects that it entails on the basis of mere non-compliance with what was ordered when the provisional *amparo* was granted, i.e., it provides no evidence that such non-compliance has actually caused harm of such nature that justifies a decision such as the one that has been adopted. I do not intend with the foregoing to say that the party who files an interlocutory constitutional appeal must always argue and prove the existence of an injury suffered by [such party] in order for its appeal (*queja*) to be upheld, as if this was an *amparo*; however, given the current procedural phase of the constitutional proceedings (in which a first-instance judgment has [already] been entered) and, more importantly, the phase that the criminal proceedings concerned by the *amparo* has reached (in which a judgment has already been rendered by the [court] whose decision is challenged), a measure such as the one that is being decided upon, with the effects that it entails, demands taking into consideration the proportionality of the expected consequence with the grounds giving rise thereto. In this regard, the Court itself has stated that:

"The principle of proportionality requires analyzing the suitability of the means that are used, the need [for the use thereof], and the weighing-up (or proportionality in the strict sense of the word) [of all the interests]" (judgment dated 6 September, 2012, joined cases three, four and fifty-two, all of them of the year 2012). Therefore, when examining this particular case, it is not possible to affirm that such measures are available based on mere non-compliance by the [court] whose decision is challenged, without further reasoning and without the showing of a situation that justifies annulling procedural steps within criminal proceedings that have already resulted in a judgment. As a corollary, reaffirming the above, the consequences of non-compliance with what was decided in the [*amparo*] should only affect the person or persons who have failed to comply with the respective court decisions, without affecting the normal conduct of the proceedings underlying the *amparo*.

- E) One cannot ignore that the appellant (*ocursante*) himself, when bringing the request for proper implementation to the *Amparo* Court of First Instance, requested: "(...) D) *That disciplinary measures be enforced against the members of the First Criminal Court of First Instance for High Risk proceedings, "A" Group, of the Department of Guatemala, in the following manner: D.1) fining each of the members of the court whose decision is appealed 1,500 quetzals; D.2) that the offences of contempt of court, judicial misconduct (prevaricato), rendering unconstitutional decisions (resoluciones contrarias a la*

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constitución) and other offences that may have been committed are certified, and D.3) that the three members of the aforesaid Court be removed from their offices pursuant to the provisions of article 50 of the Amparo, Habeas Corpus and Constitutionality Act." Judging from the above, it is obvious that the original aim of the appellant (*quejoso*) was not the annulment of acts within the criminal proceedings, but rather that the enforcement of the consequences provided by the pertinent Act, as it has been established in the preceding considerations. However, it was not until he filed an "explanatory" brief regarding the interlocutory constitutional appeal that had been brought (an issue of questionable admissibility) that he requested the "*absolute nullity of the proceedings*," a legal concept that is non-existent in constitutional matters, [and which seems] to equate procedural acts to the elements of civil law transactions, which highlights the lack of merit of the claim brought before this Court.

- F) As I have stated in previous dissenting opinions, it is the ordinary courts that are competent to try and adjudicate on the procedural issues that arise in connection with points of law, which can be raised and solved by means of the legal remedies provided for by the rules of procedure. In this particular case, if the perceived non-compliance creates situations that entail the violation of the parties' rights, or even procedural defects that entail the nullity of the proceedings, those considered to be the aggrieved parties **are the ones appropriate to petition** (understood as the right of every person to address the authorities in order to obtain a response through the appropriate procedure, the outcome of which cannot be known beforehand), by means of the suitable legal remedies, the mechanism through which the courts of ordinary justice may try, resolve and decide as appropriate, in the exercise of their powers, and the constitutional justice system must refrain from interfering therewith. In this regard, it is again worth noting what the Court itself has stated, in one of the rulings rendered during its first term, that "*the amparo* [much less the procedural issues that may arise during the proceedings]⁶ *is not meant to replace the legal protection offered by the ordinary justice system, and therefore when a claim is made through that procedure in connection with a violation of [constitutional] guarantees in the course of court proceedings, we must prevent the undue use of the constitutional justice with the aim of reviewing the decisions of ordinary courts on the merits, given that the role of the amparo court is not to decide on the substantive claims of the parties to the proceedings, but rather to examine whether the rights guaranteed by the Constitution and the statutes have been respected or not, and to offer the maximum protection in this regard, if applicable.*" (judgment dated 13 June, 1989, case file 55-89).
- G) Lastly, in keeping with the dissenting opinions issued in connection with prior decisions of this Court, in the particular case that is currently being analyzed, I reiterate that the act challenged by the *amparo* appellant does not give rise to any grievances that can be redressed within the constitutional justice system, given that the attorney who represents the now appellant (*quejoso*) knew in advance the composition of the trial court in charge of carrying out the public oral arguments. Consequently, the attorney's participation [in the proceedings] until the opening of the first session of the public bench trial was clearly aimed at disrupting the normal conduct of the proceedings, to the extent that he attempted to file recusal and abstention motions against two of the judges that were members of the court when the time-limit for filing such motions had already expired (articles 65 and 346 of the Criminal Procedure Code, and 125 of the Judiciary Act), yet he argued nothing concerning the lack of impartiality of the

⁶Translator's note: text within brackets appears in the Spanish original.

members of the aforesaid court.

Guatemala, May 20, 2013

[handwritten signature]
MAURO RODERICO CHACÓN CORADO
JUSTICE