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**Mealey's Litigation Procedure - ICSID
Denies Chile's Request To Lift Stay
Requiring Payment Of Costs**

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Mealey's Daily News Update

April 25, 2018

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Cite: 2018-4494 Mealey's Daily News Update 20

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Section: 2018, 4494

Dateline: WASHINGTON, D.C.

Body

The International Centre for Settlement of Investment Disputes (ICSID) on April 24 released an award in which a committee rejected a request by the Republic of Chile that a stay of enforcement of an award be lifted, requiring the former owner of a newspaper seized by the Chilean military to pay the costs of the award despite a pending annulment proceeding, but ordered that certain parts of the award were binding and could not be stayed (Victor Pey Casado and Foundation Presidente Allende v. Republic of Chile, No. ARB/98/2, ICSID).

([Decision available 05-180529-001X](#))

Newspaper Seizure

In the 1970s, Victor Pey Casado became affiliated with a newspaper in Chile called the El Clarin. The paper was founded by Dario Sainte-Marie and Merino Liana and was controlled by Consorcio Periodistico y Publicitario S.A. (CPP) through a wholly owned subsidiary, Empresa Periodistica Clarin Ltda. (EPC).

The paper had a left-leaning political orientation and supported a socialist coalition led by President Salvador Allende. Pey Casado acquired 40,000 shares in CPP on Oct.

2, 1972. Allende was subsequently overthrown, and El Clarin was then occupied by troops, during which time papers were seized. On Oct. 8, 1973, Decree-Law No. 77 declared and dissolved all "Marxist entities" and their affiliates, with their property passing to Chile. The paper then came under the complete control of the military and was formally confiscated pursuant to Decree No. 165 in 1975.

In January 1990, the Foundation Presidente Allende was established under Spanish law. Pey Casado donated 90 percent of his holdings in CPP and EPC to the foundation. Pey Casado wrote the president of Chile, seeking restitution for the newspaper, which he did not receive. Pey Casado filed a lawsuit in the First Civil Court in Santiago, seeking restitution and the return of a Goss printing press that had been on the property.

Annulment Request

On Nov. 7, 1997, Casado and Foundation Presidente Allende (collectively, the claimants) submitted a request for arbitration against the Republic of Chile with ICSID pursuant to the Agreement between the Kingdom of Spain and the Republic of Chile on the Reciprocal Protection and Promotion of Investments (BIT). On May 8, 2008, the ICSID tribunal issued an arbitration award for the claimants and against Chile. The claimants filed an application with ICSID for partial revision of the award. Chile requested a stay of enforcement of the award, which was granted. The tribunal found that the claimants' application was inadmissible and lifted the stay of

enforcement of the award. Chile filed an application to annul the award and applied for a provisional stay.

In December 2012, an ad hoc committee partially annulled the award. Chile submitted a request for supplementation of the annulment in relation to moratory interests for the amounts owed for costs and expenses pursuant to the annulled portion of the award. On April 3, 2012, Chile filed a request for stay of enforcement of the annulled portions of the award, pending an outcome in relation to its supplemental request. The committee denied Chile's request for a stay.

The claimants then filed a request for a new arbitration on June 18, 2013, under Article 52(6) of the ICSID Convention, which was registered with ICSID. A new tribunal was constituted. The tribunal held its first session on March 11, 2014. The claimants opposed Chile's jurisdictional arguments in relation to Coral Pey Grebe, the assignee of all the rights of Pey Casado in the present resubmission proceeding. Chile argued that the claimants' decision to substitute Pey Grebe, Pey Casado's daughter, as claimant created jurisdictional problems.

Award

On Sept. 13, 2016, the tribunal found that Pey Grebe could not be regarded as a claimant in her own right in the case. The tribunal said the previous tribunal's finding that the claimants were denied justice constituted a form of satisfaction under international law for Chile's breach of Article 4 of the BIT.

The tribunal found that the claimants were not entitled to any financial compensation. The tribunal ordered the claimants to reimburse Chile \$ 159,509.43. The tribunal dismissed all other claims. The judgment was not made public. Pey Casado and the Allende Foundation filed an application to annul the Sept. 13, 2016, award.

Stay

The claimants requested that the award be stayed pending the outcome of the annulment proceedings. Chile requested that the committee hearing the annulment case lift the stay and confirm that the award is binding until it annulled. Chile requested that the claimants deposit the \$ 182,472.79 they owe it for costs into an escrow bearing account. Unless the award is annulled, Chile requests that the funds be released to it.

"The Committee has weighed these arguments and finds that the balance tips in favour of the Applicants. In fact, the Applicants have conducted these proceedings for 20 years without repudiating the obligations that were placed on them. Their refusal to pay the costs of the Resubmission Award before the stay of its enforcement does not constitute a repudiation that should cause the Committee to consider otherwise. The Committee does not see a major risk for the Respondent that the Applicants will not finally pay the costs if the annulment decision should be in the Respondent's favour," the committee said.

In a March 15 decision, the committee said the costs incurred by the claimants in the annulment case placed a burden on them that would worsen if they had to pay the

costs of the award in the resubmission case. It noted that the parties agreed to a procedural order that the case end in a reasonable amount of time.

The committee also denied a request by Chile that it order the claimants to suspend another arbitration brought by them pursuant to the United Nations Commission on International Trade Law (UNCITRAL) rules. The committee said the case involves new claims and noted that the parties agreed to exclude claims that were asserted in the present action.

Binding Award

The committee did lift the stay as to other parts of the award. It said Article 53 of the ICSID Convention provides that an award remains untouched unless it is annulled. The committee found that certain dispositive parts of the award could not be stayed.

"The dispositive part of the Resubmission Award has determined the status of Ms. Coral Pey Grebe; it has confirmed that the Respondent has violated its obligation not to treat the Applicants unfairly; it has rejected a claim for pecuniary compensation for want of proof; it has rejected claims for unjust enrichment and moral damages; it has ordered the Applicants to reimburse part of the costs to the Respondent. The dispositive part of the decision on rectification has corrected certain paragraphs of the Resubmission Award and ordered the Applicants to reimburse costs to the Respondent. Except for the decisions on costs, none of the above-mentioned determinations confer rights to the Respondent that it

could enforce," the committee said.

The case was heard by President Professor Rolf Knieper and Professors Yuejiao Zhang and Nicolas Angelet.



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