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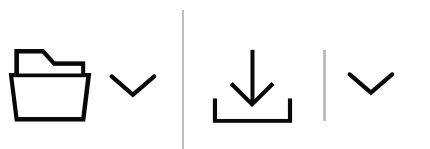
Publisher's Payout To Chile Stayed In \$330M Seizure Row

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Summary

An International Centre for Settlement of Investment Disputes panel in an order released Tuesday told the centenarian owner of a Spanish newspaper seized in Chile's 1973 coup that he can postpone paying almost \$200,000 while he tries to revive a \$330 million claim over the dissolution of the paper.

Body

An International Centre for Settlement of Investment Disputes panel in an order released Tuesday told the centenarian owner of a Spanish newspaper seized in Chile's 1973 coup that he can postpone paying almost \$200,000 while he tries to revive a \$330 million claim over the dissolution of the paper.

The three-member committee ruled that Victor Pey Casado and a foundation that held his newspaper shares don't have to immediately

cough up more than \$180,000 owed to Chile for the costs related to a September 2016 award rejecting their \$329.7 million claim against Chile, whose request that arbitrators also suspend a parallel proceeding was likewise denied.

The claim alleges that Chile must pay damages due to the dissolution of the newspaper El Clarin and the forcible seizure of two companies associated with the publication following a military coup that brought the dictator Augusto Pinochet to power in Chile.

Casado, who is seeking to have that award annulled, had asked the ICSID committee to stay enforcement of the award pending the resolution of the annulment proceedings. The annulment bid is proceeding parallel to a related arbitration initiated under the rules of the United Nations Commission on International Trade Law in 2017 that similarly relates to the events surrounding the dissolution of El Clarin, a left-leaning publication that was supportive of the Chilean president in power before Pinochet's coup, the socialist Dr. Salvador

Allende.

Chile's lawyers wanted the stay lifted, arguing that Casado has refused to pay or deposit money in an interest-bearing account since the 2016 award. But arbitrators said in a March 15 order only released Tuesday that Casado and the foundation had never veered away from the obligations placed on them in the proceeding's 20-year history. Moreover, their refusal to pay the cost of Chile's arbitration after the award but before the stay was imposed in October "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 favor," arbitrators wrote. "At the same time, the actual costs of the annulment proceeding put a burden on the applicants that would be aggravated by the immediate reimbursement of the costs for the resubmission proceeding. Further, the parties have agreed to a procedural calendar that will allow this proceeding to conclude in an

appropriate period."

The ICSID committee also said Casado's parallel UNCITRAL proceedings didn't overlap with the instant case, and instead came later, arising out of a bilateral investment treaty.

"At the same time, the committee notes that, in accordance with Article 26 Convention, the parties have consented to exclude the pursuit of any other remedy (including an UNCITRAL arbitration) for the claims which were brought in this case. Accordingly, the committee invites the parties not to pursue claims identical to those brought in these arbitration proceedings before any other national or international adjudication body."

But the committee also refused to stay other binding effects of the award, such as findings that Casado's daughter Coral Pey Grebe isn't a claimant in these proceedings; that the former newspaper owner had failed to prove any quantifiable injury caused by the seizure; and that the claimants had been the victim of a denial of justice, was itself was "a form of

satisfaction" under international law, and therefore no damages were required. Since those findings can't be enforced, a stay against them would be futile, arbitrators said.

Filed two decades ago, the case is believed to be the longest-running case at ICSID, and follows several unsuccessful attempts to disqualify various arbitrators in the matter for alleged conflicts of interest and an initial \$10 million award granted in 2008 to Pey Casado and the foundation, Foundation "Presidente Allende," which was later partially annulled.

After the initial 2008 award, an ICSID committee annulled the damages component of the award, prompting the claimants to resubmit the claim in 2013. The award currently being challenged was issued thereafter, in September 2016.

There, the tribunal agreed with the initial tribunal that issued the 2008 award that the claimants had been the victim of a denial of justice, but that finding in itself was "a form of satisfaction" under international law and no

damages were awarded. The 2016 tribunal was composed of V.V. Veeder QC, Alexis Mourre and Franklin Berman QC.

Thereafter, the claimants filed a request that another tribunal issue an interpretation of the 2008 award, along with a different request that the 2016 award be rectified for clerical errors.

The claimants then sought the disqualification of Berman and Veeder for an alleged undisclosed conflict of interest because they are members of the same chambers in England as two barristers representing Chile in cases before the International Court of Justice. That request was denied in February, but Pey Casado and his foundation targeted Veeder again a few days later, telling ICSID that answers he supplied in connection with the previous inquiry into the alleged conflict of interest were "incomplete and misleading."

Thereafter, Berman asked to sit out proceedings related to Veeder's proposed removal, saying the fact he was a party to the same underlying challenge could call into question his objectivity

— prompting Pey Casado to renew his bid to disqualify Berman.

But the requests were denied in April 2017. That same month, Pey Casado, the foundation and his daughter initiated the UNCITRAL arbitration.

Thereafter, the interpretation proceeding at ICSID relating to the 2008 award was discontinued.

Pey Casado is represented by Juan Garcés of Garcés & Prada Abogados.

Chile is represented by Arnold & Porter, Chile's Investment Promotion Agency and [Carey & Cia ▼](#).

The case is Pey Casado et al. v. Republic of Chile, case number ARB/98/2, at the International Center for Settlement of Investment Disputes.

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