

Long-running Pey Casado v. Chile saga sees new twist, as Spanish judge orders Chile to pay 552 million USD to the claimants

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A Spanish judge has ordered Chile to pay approximately 552 million USD to the Spanish owners of the Chilean newspaper *El Clarin*, thus introducing a new twist to the seemingly ever-lasting Pey Casado v. Chile saga.

Readers may recall that the underlying judicial battle has, over a period of more than 20 years, given rise to no less than three arbitrations under the Chile-Spain bilateral investment treaty (BIT): the ICSID cases [Victor Pey Casado and President Allende Foundation v. Chile \(1\)](#) and [Victor Pey Casado and President Allende Foundation v. Chile \(2\)](#), as well as the [Victor Pey Casado & President Allende Foundation v. Chile \(3\)](#) UNCITRAL arbitration.

In a laconic order dated December 7, 2021 [[click to download](#)], the first instance court no. 101 of Madrid has now ordered Chile to pay approximately 430 million USD in damages, plus 122 million USD in interest, to Coral Pey Grebe (Mr. Pey Casado's daughter) and the President Allende Foundation. The court's judgment was issued in the context of enforcement proceedings of a 2008 ICSID award

Indeed, the long-running dispute over the 1973 confiscation of the *El Clarin* newspaper by the Pinochet administration has given rise to several arbitration decisions:

- A [2008 ICSID award](#) in which the first ICSID tribunal upheld jurisdiction over Mr. Pey Casado's investment in newspaper shares bought in 1972. The tribunal next declined jurisdiction over the expropriation of the newspaper (as the BIT was not in force at the time when this confiscation had taken place), but upheld jurisdiction over disputes that related to compensation proceedings before domestic courts (which took place after the BIT's entry into force). The tribunal ultimately found that delays suffered by the claimants in these domestic compensation proceedings amounted to a denial of justice and thus breached the BIT. The claimants were awarded approximately 10 million USD in damages, plus interest (at 5%) and costs. The damages portion of this award, however, was subsequently [annulled in 2012](#).
- A [2016 award](#) issued by the ICSID resubmission tribunal, which found that the claimants' case for damages flowing from the BIT breach had not been made out, since the claimants had submitted a valuation of their lost assets, rather than of their lost shareholding (the investment over which the first tribunal had upheld jurisdiction). The resubmission tribunal, however, pointedly reminded Chile of its treaty breach and corollary duty to pay compensation for damages that could be proved under international law. This resubmission award was upheld in a [2020 annulment decision](#), which emphasized the *res judicata* effect of the 2008 award.
- A [2019 UNCITRAL award](#), which declined jurisdiction over all claims.

In 2013, the first instance court 101 of Madrid executed the costs determination contained in the 2008 award ([see here](#)).

As acknowledged by a [news article published by El Clarin](#) (which continues to operate as an online paper), the December 2021 decision continues the execution of the 2008 award, which had determined the claimants' right to compensation. *IARReporter* has learned that the claimants turned to the Spanish courts for execution and enforcement, arguing that the court should fix the amount of damages owed under the 2008 award since ICSID awards must be enforced as if they were a final judgment of a court of the enforcement state (Article 54 ICSID Convention), and Spanish enforcement courts have the power to fix the *quantum* when executing Spanish judgments that have identified a right to compensation but failed to calculate the damages owed. To quantify

their damages, the investors submitted an expert report on *quantum* by Accuracy. The Madrid court agreed with the claimants, and proceeded to fix the *quantum* of damages, before enforcing the award.

We understand that while Chile in principle has a right to appeal this order, the state initially refused service of the December 7, 2021 order. The parties are currently discussing whether, due to this refusal, the limitation period for appealing the order has lapsed under Spanish law.

In parallel, since the 2020 annulment decision, the claimants have also asked the Chilean courts to annul the Pinochet decree which expropriated the assets of El Clarin (as opposed to Mr. Pey's *shares*). We understand that a decision is expected shortly in these Chilean proceedings.

The Madrid court was composed of sole judge Pedro Jose Puerta Lanzon.

The claimants were assisted by Juan E. Garces, with an expert report on Spanish law by Francisco Vicent Chulia.