

Spanish court revives Pey Casado saga

Jack Ballantyne
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A court in Madrid has revived a deceased Spanish national's long-running investor-state dispute against Chile

A Spanish court has frozen assets of Chile's national copper company after ruling that the state should pay US\$552 million to satisfy a 14-year old ICSID award relating to the seizure of a newspaper during the Pinochet era.

A judge in the Madrid Court of First Instance No. 101 issued a [writ](#) in December for the "forced execution" of a 2008 ICSID award in favour of the late Spanish publisher Víctor Pey Casado and the President Allende Foundation.

The two-page writ, which is appealable, requires Chile to pay a principal sum of US\$430 million along with US\$122 million in interest to Pey Casado's daughter Coral Pey Grebe and the foundation.

The writ is unusual since the ICSID award only granted the investors US\$10 million plus interest. The damages findings of the award were annulled four years later while the findings on liability were left intact.

The judge issued a further [decision](#) in March freezing any funds owed to Chile's national copper corporation Codelco by the Iberian arm of French cable manufacturer Nexans. Nexans has said it holds no assets belonging to Codelco.

Chile appeared in the Spanish proceeding in May and has opposed enforcement on several grounds. A final ruling is pending.

Garcés y Prada in Madrid continues to represent the investors. Hogan Lovells in Madrid is acting for Chile having also appeared in earlier Spanish enforcement proceedings relating to the same award.

It is the latest twist in a saga relating to the seizure of Chilean newspaper *El Clarín* by the regime of Augusto Pinochet following the 1973 military coup that toppled President Salvador Allende. The dispute has spawned three BIT claims – two at ICSID and one under UNCITRAL rules. Pey Casado himself [passed away](#) in 2018 but his daughter has continued the fight for compensation.

The first arbitration was filed at ICSID in 1997 and was dogged by three tribunal resignations and ICSID's first-ever disqualification of an arbitrator. In the 2008 award, a tribunal consisting of chair **Pierre Lalive** and **Emmanuel Gaillard** (both now deceased) along with **Mohammed Chemloul** of Algeria found it lacked jurisdiction over the claims on the seizure of *El Clarín* assets that took place before the BIT entered into force – while upholding jurisdiction over claims for investment in shares.

However, the tribunal upheld denial of justice claims relating to compensation proceedings in the Chilean courts and awarded US\$10 million plus interest. An annulment committee chaired by **Yves Fortier QC** annulled the damages findings in 2012, [ruling](#) that Chile had been denied the right to be heard and that the reasoning on damages was contradictory.

The investors resubmitted their ICSID claim in 2013 to seek compensation for the BIT breach, but a tribunal consisting of the UK's **Franklin Berman** as chair, the late **VV Veeder QC** and **Alexis Mourre** of France [ruled three years later](#) that they had failed to prove any injury flowing from the BIT breach.

The Berman tribunal confirmed it was bound by the res judicata of the 2008 award and could not award damages for the expropriation of *El Clarin*. It confirmed that the investors had a right to compensation under that award but had failed to establish any financially assessable damage.

The investors pursued unsuccessful challenges to Berman and Veeder in rectification proceedings and also failed in a bid to annul the 2016 award. They also brought an UNCITRAL claim against Chile under the BIT that was [dismissed](#) in 2019.

The investors' counsel team in the various proceedings included Garcés y Prada, Gide Loyrette Nouel in Paris, Buckley Sandler in Washington DC, and **Robert Howse** of New York University. Chile used Arnold & Porter and Carey & Cía in Santiago.

The investors are also awaiting a decision the First Instance Civil Court of Santiago in the coming weeks where they have sought annulment of the Pinochet decree which expropriated the assets of *El Clarin*.

In the Madrid Court of First Instance no. 101

- **Judge Pedro Jose Puerta Lanzon**

Counsel to the claimants

- Garcés y Prada
- Partner **Juan Garcés** in Madrid and **Hernán Garcés** (New York University LLM)

Expert witness for the claimants

- **Robert Howse** of New York University (on international law)
- **Francisco Vicent Chulia** of the University of València (on commercial and Spanish law)
- **Victor Moreno Catena** of Carlos III University Madrid (on procedural law)

Counsel to Chile

- Hogan Lovells

Partner **Gonzalo Ardila** and counsel **Silvia Martínez** in Madrid.

Expert witness for Chile

- **Javier Díez-Hochleitner** of Universidad Autónoma de Madrid (on international law)

Victor Pey Casado and Foundation Presidente Allende v Chile (ICSID Case No. ARB98/2)

In the second annulment proceeding

Annulment committee

- **Rolf Knieper** (Germany) (chair)
- **Nicolas Angelet** (Belgium)
- **Yuejiao Zhang** (China)

Counsel to Victor Pey Casado and Fountation Presidente Allende

- Garcés y Prada

Partner **Juan Garcés** in Madrid

- Gide Loyrette Nouel

Partner **Carole Malinvaud** and counsel **Alexandra Munoz** in Paris

- Professor Robert Howse of New York University

Counsel to Chile

- Ministry of Foreign Affairs

Vice-minister **Carolina Valdivia**; general directorate of International Economic Relations: **Mairée Urán Bidegain**, **Pablo Nilo Donoso**, and **Macarena Rodríguez**

- Arnold & Porter

Partners **Paolo Di Rosa**, **Gaela Gehring Flores** and **Mallory Silberman**, and associates **Katelyn Horne**, **Caroline Kelly**, and **Michael Rodriguez**, in Washington, DC

In the resubmission proceeding

Second tribunal

- **Franklin Berman QC** (UK) (Chair)
- **VV Veeder QC** (UK) ([replaced](#) **Philippe Sands** in 2014)
- [Alexis Mourre](#) (France)

Counsel to Victor Pey Casado and Fountation Presidente Allende

- Garcés y Prada

Partner **Juan Garcés** in Madrid

- Gide Loyrette Nouel

Partner **Carole Malinvaud** and counsel **Alexandra Munoz** in Paris

- **Robert Howse** and **Hernan Garcés** at the New York University School of Law in New York

Counsel to Chile

- Ministry of Foreign Affairs, DIRECON

Liliana Macchiavello and **Victoria Fernandez-Armesto**

- Arnold & Porter

Partners **Paolo Di Rosa**, **Gaela Gehring Flores** and **Mallory Silberman** in Washington, DC

- Carey & Cia

Partners **Jorge Carey** and **Gonzalo Fernández** and associate **Juan Carlos Riesco** in Santiago de Chile

In the first annulment proceeding

Ad hoc annulment committee

- **Yves Fortier QC** (Canada)
- **Piero Bernardini** (Italy)
- **Ahmed El Kosheri** (Egypt)

Counsel to Victor Pey Casado and Fountation Presidente Allende

- Garcés y Prada Abogados in Madrid

Partner **Juan Garcés** in Madrid

- Gide Loyrette Nouel

Partner **Carole Malinvaud** and associate **Alexandra Muñoz** in Paris

- Buckley Sander

Partner **Samuel Buffone** in Washington, DC

Counsel to Chile

- Foreign Investments Committee

Matías Mori Arellano and **Carlos Dettleff** in Santiago

- Arnold & Porter

Partners **Paolo Di Rosa**, **Jean Kalicki*** and **Mallory Silberman** and counsel **Samuel Witten** in Washington, DC

*no longer with the firm

- Carey & Cia

Partners **Jorge Carey** and **Gonzalo Fernández Ruiz** in Santiago

In the first arbitration

Arbitral tribunal

- **Pierre Lalive** (President) (Switzerland) - appointed following the resignation of **Francisco Rezek** (Brazil)
- **Mohammed Chemloul** (Algeria) - appointed following the disqualification of **Mohammed Bedjaoui** (Algeria)
- **Emmanuel Gaillard** (France) - appointed by ICSID following the resignation of **Jorge Witker** (Mexico) and **Galo Leoro Franco** (Ecuador)

Counsel to Victor Pey Casado and Allende Foundation

- Cabinet Garcés y Prada Abogados

Partner **Juan E Garcés** in Madrid

- Gide Loyrette Nouel

Partners **Carole Malinvaud** and associate **Alexandra Muñoz** in Paris

- Ropes & Gray LLP

Partner Samuel Buffone in Washington, DC

- Boston University School of Law

William W Park

Counsel to Chile

- Chief of justice, ministry of the economy, development and reconstruction, **Eduardo Escalona Vázquez**
- Department for defence of arbitrations relating to foreign investments, Ministry of Economy, Development and Reconstruction Eduardo Bobadilla Brinkmann, **Nicolás Muñoz Montes** and **Diego Rioseco Antezana**
- Carey & Cía

Partners Jorge Carey and Gonzalo Fernández Ruiz in Santiago

- Arnold & Porter (from 2007)

Partner **Paolo Di Rosa** in Washington, DC

- Winston & Strawn (from 2004 to 2007)

Counsel **Paolo Di Rosa** in Washington, DC

- White & Case (from 1997 to 2004)

In the PCA arbitration

Tribunal

- **Bernard Hanotiau** (Belgium) (president)
- **Hélène Ruiz Fabri** (France) (nominated by the claimants)
- **Stephen Drymer** (Canada) (nominated by Chile)

Counsel to claimants

- Garcés y Prada

Partner **Juan Garcés** in Madrid

- **Robert Howse** and **Hernan Garcés** at the New York University School of Law in New York

Counsel to Chile

- Foreign Investments Committee, Chilean Ministry of Economy

Liliana Machiavello and Victoria Fernández-Armesto in Santiago

- Arnold & Porter

Partners **Paolo Di Rosa**, **Gaela Gehring Flores** and **Mallory Silberman**, and associates **Katelyn Horne**, **Caroline Kelly**, **Michael Rodríguez**, **Sally Pei** and **Mateo Morris** in Washington, DC

- Carey

Partners **Jorge Carey** and **Gonzalo Fernández** with associate **Juan Carlos Riesco** in Santiago

Documents

March writ of Spanish Court of First Instance



December writ of Spanish Court of First Instance



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