



Spanish publisher objects to Latin maxim in award

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Douglas Thomson



Victor Pey Casado

As his new UNCITRAL claim against Chile gets underway, Spanish publisher Victor Pey Casado has extended the already 19-year-long lifetime of his record-breaking ICSID claim by initiating annulment proceedings against a 2016 award. The tribunal's use of a Latin maxim betrays a pro-state bias, he argues.

In a [filing](#) on 10 October the 102-year-old Pey and a charitable foundation he established requested annulment of the award [issued](#) last September by a tribunal including **Franklin Berman QC**, **VV Veeder QC** and **Alexis Mourre**, which refused to grant monetary compensation for his claim.

Pey argues the tribunal was not properly constituted, manifestly exceeded its powers, seriously departed from a fundamental rule of procedure and failed to state the reasons for the award.

The annulment request marks the latest step in Pey's nearly 50 year-long quest to win compensation for the seizure of his publishing business in the wake of Chilean strongman Augusto Pinochet's 1973 military coup. The coup led to the death of his friend Salvador Allende, president of Chile before Pinochet.

While Pey's case originally went through the Chilean justice system, in 1997 he and his foundation filed for arbitration at ICSID under the Chile-Spain bilateral investment treaty.

An award 10 years later said that Chile had breached the fair and equitable treatment standard of the BIT and denied Pey justice by taking years to conclude his claim. The state was ordered to pay US\$10 million in damages but that award was struck down on annulment.

In 2013 Pey filed a new claim for US\$330 million damages on the basis of the first award's findings on liability.

Last year the tribunal chaired by Berman dismissed the claim, ruling that the earlier tribunal's finding of a denial of justice "constitutes in itself a satisfaction [of] international law". Pey had not proved "any further quantifiable injury" for which he could be awarded compensation, it said.

The tribunal said it was "only too conscious" of the "very unusual" length of the proceeding but the time had come to "put an end" to the arbitration. It added the Latin maxim, "*rei publicae interest ut finit sit litium*" [the public interest is that the litigation should end].

Pey says that by attempting to limit the length of the arbitration the tribunal exceeded its powers and showed its bias in favour of the state.

"The only public interest represented in the present proceedings is that of the Republic of Chile. The public interest of any other state is not directly involved," he states in his annulment request.

Pey adds that the tribunal went beyond its mandate in concluding that he and the foundation had already been given "satisfaction" in the first award. The first award made his right to financial compensation *res judicata*, he says.

The annulment application also revives the allegation that Berman and Veeder's membership of Essex Court Chambers in London clouded their independence and impartiality since other members of the barristers' set have acted for Chile in past cases.

In July a Santiago court ordered Chile to disclose any sums paid to barristers at Essex Court since 2005, though Pey says the state still has not complied. Last month independent Chilean congressman Gabriel Boric Font formally requested Chile's foreign ministry to disclose the figures and further details of the arbitration.

The annulment is the eighth stage of the ICSID case. The original arbitration was followed by separate revision and annulment proceedings and a request for a supplementary decision. After that came the second arbitration and interpretation and rectification proceedings.

Pey filed to terminate the last of these in April after he, the foundation and his daughter Coral Pey Grebe had filed a new request for UNCITRAL arbitration. His lawyer, **Juan Garcés** of Garcés y Prado in Madrid, says the UNCITRAL claim is "conceptually distinct" and relates to Chile's failure to inform him of a 2008 court ruling that the original confiscation had been a legal nullity.

Bernard Hanotiau of Belgium is chairing the tribunal, with **Hélène Ruiz Fabri** of France and **Stephen Drymer** of Canada as co-arbitrators. To date, 18 different arbitrators have been appointed to the various tribunals and committees which have heard the dispute.

The latest annulment request means three more will have to be found.

In the UNCITRAL claim

President Allende Foundation, Victor Pey Casado, Coral Pey Grebe v Chile

Appointing Authority

- **Dominique Hascher** (France) (appointed by the PCA secretary-general)

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

- Committee of Foreign Investments, Chilean Ministry of Economy

Federico Gajardo, Liliana Machiavello, Cecilia Arroyo and Victoria Fernández-Armesto in Santiago

- Arnold & Porter Kaye Scholer

Partners **Paolo Di Rosa** and **Gaela Gehring Flores** with associates **Mallory Silberman** and **Katelyn Horne** in Washington, DC

- Carey

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

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

In the resubmission proceedings

Tribunal

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

Counsel to Victor Pey Casado and Foundation Presidente Allende

- Garcés y Prada

Partner **Juan Garcés** in Madrid

- Gide Loyrette Nouel

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

- Buckley Sandler

Partner **Samuel Buffone** in Washington, DC

Counsel to Chile

- Arnold & Porter

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

- Carey & Cia

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

In the annulment proceeding

Ad hoc annulment committee

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

Counsel to Victor Pey Casado and Foundation 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 Kaye Scholer

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

*no longer with the firm

- Carey & Cia

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

In the original 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 Garcés** in Madrid

- Gide Loyrette Nouel

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

- Ropes & Gray

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)

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

- White & Case (from 1997 to 2004)

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