

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Víctor Pey Casado And Foundation President Allende

v.

Republic of Chile

(ICSID Case No. ARB/98/2)

Second Annulment Proceeding

**DECISION ON THE RESPONDENT'S REQUEST FOR CLARIFICATION REGARDING THE
DECISION ON THE STAY OF THE ENFORCEMENT OF THE AWARD**

Members of the ad hoc Committee

Professor Rolf Knieper, President

Professor Yuejiao Zhang

Professor Nicolas Angelet

Secretary of the ad hoc Committee

Ms. Laura Bergamini

Date of dispatch to the parties: 9 July 2019

Date of dispatch of the corrected version to the parties: 15 July 2019

Decision on the Respondent's Request for Clarification
regarding the Decision on the Stay of the Enforcement of the Award

I. PROCEDURAL HISTORY

1. On 1 July 2019, the Respondent filed a request for clarification regarding the decision on the stay of the enforcement of the award issued on 15 March 2018 (the “Stay Decision” and the “Request for Clarification”).¹
2. The Respondent noted that in “the *dispositif*, the Committee [...] stated that ‘[t]he stay of enforcement of *paragraphs 1 to 5 and 7* of the *dispositif* of the Resubmission Award [...] is *lifted*’ and that ‘[t]he stay of enforcement of *paragraph 6* of the *dispositif* of the Resubmission Award [...] is unconditionally *continued*.’ Analogous text also appeared in paragraphs 62 and 63 of the Decision. Nevertheless, paragraphs 82 and 86 suggest a different conclusion” (emphasis in the original). Accordingly, Chile requested that the Committee “provide clarity on the above.”²
3. On 8 July 2019, the Applicants submitted their comments on the Request for Clarification and requested that the Respondent be ordered to pay the costs incurred in connection with the request.

II. ANALYSIS

4. In paragraph 52 of the Stay Decision, the Committee found that under Article 53(1) of the ICSID Convention annulment committees can only stay the “enforcement of the award” and not its “binding force.”³
5. Accordingly, in paragraph 60 of the Stay Decision, the Committee noted that “the decisive question” in order to decide whether the Resubmission Award “lends itself to a stay of enforcement [...] is whether the award has conferred rights to the Respondent that it could enforce against the Applicants if the Respondent were not hindered by a stay.”⁴

¹ The French version of the Stay Decision was transmitted to the parties on 9 April 2018 pursuant to paragraph 11.7 of Procedural Order No. 1.

² Chile’s Request for Clarification, pp. 1 and 2.

³ Stay Decision, para. 52.

⁴ Stay Decision, para. 60.

Decision on the Respondent's Request for Clarification
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6. In paragraph 62 of the Stay Decision, the Committee found that “except for the decisions on costs, none of the [...] determinations” in the Resubmission Award and in the rectification decision “confer rights to the Respondent that it could enforce.” Accordingly, in paragraph 82 of the Stay Decision, the Committee clarified that it “decides to continue the stay of the enforcement regarding the costs awarded by the Tribunal.”⁵
7. In light of these findings, it appears clear that, in paragraphs 62, 63 and 91 of the Stay Decision, the Committee intended to stay the enforcement of the determinations on costs contained in paragraphs 7 of the *dispositif* of the Resubmission Award and 62(b) of the decision on rectification,⁶ and not the enforcement of paragraph 6 of the *dispositif* of the Resubmission Award (that does not confer any “rights to the Respondent that it could enforce”).

III. DECISION

8. Having considered the parties' submissions, in light of the above the Committee:
 - a. Confirms that the reference to “paragraphs 1 to 5 and 7 of the *dispositif*” of the Resubmission Award in paragraphs 62, 63, and 91(a) of the Stay Decision must be read as meaning “paragraphs 1 to 6 and 8 of the *dispositif*” of the Resubmission Award;
 - b. Confirms that the reference to “paragraph 6 of the *dispositif*” of the Resubmission Award in paragraph 91(b) of the Stay Decision must be read as meaning “paragraph 7 of the *dispositif*” of the Resubmission Award; and
 - c. Reserves the decision on costs until the final decision on the Annulment Application.

⁵ Stay Decision, para. 82.

⁶ Quoted in paragraphs 46 and 47 of the Stay Decision.

Víctor Pey Casado and Foundation President Allende v. Republic of Chile
(*ICSID Case No. ARB/98/2 - Second Annulment*)

Decision on the Respondent's Request for Clarification
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[Signed]

[Signed]

Prof. Nicolas Angelet
Member of the *ad hoc* Committee

Prof. Yuejiao Zhang
Member of the *ad hoc* Committee

[Signed]

Prof. Rolf Knieper
President of the *ad hoc* Committee