

Victor Pey Casado and President Allende Foundation
v. Republic of Chile (ICSID Case No. ARB/98/2)

Introductory Note

On April 20, 1998, the Centre registered a request submitted by Victor Pey Casado, a Spanish national, and the Fundación Presidente Allende, a foundation established under the laws of Spain (the Claimants), for institution of an arbitration proceeding against the Republic of Chile (the Respondent). The dispute concerns the confiscation, between 1973 and 1975, of two Chilean publishing companies. The Claimants invoked the 1991 Chile-Spain bilateral investment treaty calling for the settlement by ICSID arbitration of disputes concerning expropriations.

The parties opted to constitute the Arbitral Tribunal in accordance with Article 37(2)(b) of the ICSID Convention. Accordingly, the Tribunal consists of three arbitrators, one appointed by each party, and the third, presiding, arbitrator appointed by agreement of the parties. Following the resignation of two of its members, the Tribunal, as reconstituted, now consists of Judge Mohammed Bedjaoui, a national of Algeria, appointed by the Claimants, Ambassador Galo Leoro Franco, a national of Ecuador, appointed by the Respondent, and Professor Pierre Lalive, a national of Switzerland, appointed to be President of the Tribunal by the Chairman of the Administrative Council of ICSID.

The Respondent, in February 1999, filed objections to jurisdiction and on September 13, 1999, filed a request for provisional measures for the Claimants to post a guarantee for costs.

The Claimants, on April 23, 2001, filed a request for provisional measures asking the Tribunal to recommend the suspension of the execution of Decision No. 43 taken by the *Ministerio de Bienes Nacionales* of Chile in respect of property that the Claimants argued were the same as the ones that are the subject of the present proceeding.

The Tribunal addressed these requests in its decision on provisional measures of September 25, 2001, and dismissed both requests. In the decision, the Tribunal first analyzed the rules governing to provisional measures in the ICSID framework (paras. 1 to 27). The Tribunal then addressed the request for provisional measures filed by the Claimants, examining first Decision No. 43 (paras. 36 to 41) and the question whether, under the circumstances of the case, the conditions for recommending provisional measures were fulfilled (paras. 43 to 66). The Tribunal also considered an argument by the Claimants that a recommendation for provisional measures was necessary in order to avoid the dispute submitted to the Arbitral Tribunal being aggravated (paras. 67 to 77). Finally, the Tribunal analyzed the Respondent's request and in particular the Respondent's argument pointing out the risk faced by a State party to an ICSID proceeding confronted with the insolvency of an investor (paras. 84 to 89).

In dismissing both requests for provisional measures, the Tribunal invited both parties to strictly respect the general principle of law according to which any party to a proceeding has to ensure that no action is taken that might prejudice the rights of the other Party or aggravate the dispute submitted to the Arbitral Tribunal.

The September 25, 2001 decision was issued in French and Spanish. The text of the decision is reproduced below in both languages with the parties' consent and is posted in PDF format on ICSID's website at www.worldbank.org/icsid.

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