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PEY CASADO/PRESIDENT ALLENDE FOUNDATION V. CHILE

In the latest stage of a decades-long struggle for just reparations, victims of human rights abuses by the Pinochet dictatorship have requested a committee of the World Bank’s International Center for the Settlement of Investment Disputes (ICSID) to annul an arbitral award that, the claimants say, is tainted by, among others things, the bias of the tribunal in favor of the Chilean state, as well conflicts of interest of members of the tribunal, which had not been dealt with appropriately at ICSID.

Previously, a different ICSID tribunal had found that Chile was liable for a violation of fair and equitable treatment, and denial of justice, in relation to the claimants, who had their newspaper assets seized in the Pinochet coup and were deprived of their property rights throughout the period of the dictatorship, but notably, even after the return of democracy to Chile in 1990, where they were also cheated out of compensation under Chile’s transitional justice program by various fraudulent and improper means.

The earlier ICSID tribunal held that the victims had a “right to compensation”, but the specific methodology to be used in calculating the amount was successfully attacked by the Chilean state in an ICSID annulment proceeding. This led to the new tribunal whose decision Pey Casado and the Allende Foundation are now challenging in their request for annulment.

While the new (“resubmission”) tribunal’s mandate was strictly limited to finding a correct methodology for calculating damages, the tribunal improperly saw its role as forever burying the victims’ quest for reparation in order to bring “peace to the Republic” as the tribunal cryptically put it, i.e. to Chilean state’s benefit. Thus, the resubmission tribunal, instead of staying within its proper authority, which was to calculate damages, re-opened other issues, which it did not, under ICSID rules, have the jurisdiction to do-finding, incoherently, for example, that the victims had been given “satisfaction”, even though the binding earlier ruling had held they were entitled to financial indemnification (which is exactly what the resubmission tribunal had been established to calculate!).

A cloud surrounding the entire dispute is the relationship of two of the arbitrators in the resubmission case to Essex Court Chambers, a group of London barristers. There is evidence that Essex Court has been secretly in the pay of the Chilean state. In July, a Santiago court ordered the government to disclose any sums that had been paid by the state to Essex Court over the relevant period. So far, the government has defied the court order, leading to questions to the Foreign Minister by parliamentarians in Chile.