

Davor Harasic
Law Report
Executive Summary

Mr. Davor Harasic Yaksic is a procedural law professor at Universidad de Chile and Universidad Diego Portales and holds a Masters degree from Universidad de Chile. He is a former Deputy Justice of Santiago's Court of Appeals. Mr. Harasic also held the position of Director at Universidad de Chile's Law School and is a former lawyer and chairman of the State Defense Council (Consejo de Defensa del Estado). Davor Harasic obtained his lawyer's degree from Universidad de Chile.

The main conclusions of his report are the following:

1° *“it is entirely inappropriate to claim, via this route a decree on the protection of rights which are not unquestionable or whose very existence has been placed in doubt.”*

2° *“[...] The appellant has been incapable of citing any clause at all that gives them an unquestionable right to acquire 49% of the Disputed shares, and both the contract of 1978 and the agreement of 2002 always state that the purchase option will be up to 49% [...]”.*

3° *“So the right whose protection is being sought is far from being unquestionable, rather its very existence is clearly in question; in the event that it did exist this would have to be declared legally in a process of public knowledge which would allow discussion and the presentation and challenge of complex evidence, and for which a writ proceeding is inadequate [...] Ergo, faced with the evident absence of an unquestioned right, the only proper recourse is to reject the motion.”*

4° *“[...] it is impossible to conclude, from these clauses in the contract – or any other – that a legal relationship exists which impedes Anglo American from freely dealing with the Disputed shares. CODELCO is thus trying to move beyond the words, arguing that the process should listen to the intentions of the parties, in a venue which is not suited to finding out this intention, without presenting any element which might make it possible to determine these clearly and trying to persuade the court to ignore the literal meaning of the words precisely because they find it unfavorable. Furthermore, even if one were to try to interpret the will of the parties who signed the contract, as the appellant wishes, there cannot be any doubt that if it had been the will of two highly sophisticated and properly advised*

parties to agree a prohibition on transfers, whose validity has even been questioned by part of the doctrine, they would certainly have stipulated this expressly, setting actual periods and limits.”

5° *“[...] what CODELCO asks cannot maintain the real status quo, clearly shown in the clauses of the contract, but what they are really asking for is: either that there be innovation; or that a status quo which only exists in the minds of the appellants be maintained, as the fruit of a very dubious interpretation of the contract, which permits one to conclude that it contains tacit non-transfer clauses; in both cases this request must be rejected and the no innovation order must be lifted.”*
