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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 10/91; Case No. 10.169
Session: Seventy-Ninth Session (11 – 22 February 1991)
Title/Style of Cause: Banco de Lima v. Peru
Doc. Type: Report
Decided by: Chairman: Patrick L. Robinson;
First Vice Chairman: Marco Tulio Bruni Celli;
Second Vice Chairman: Oscar Lujan Fappiano;
Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares
Lanza; Michael Reisman
Dated: 22 February 1991
Citation: Banco de Lima v. Peru, Case 10.169, Inter-Am. C.H.R., Report No. 10/91,
OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)
Represented by: APPLICANT: David Westin of the law firm Wilmer, Cutler, and Pickering.
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[FN10] The Inter-American Commission on Human Rights during its 79th period of sessions decided to publish this report in light of the fact the petitioners in this case desisted in their request for a reconsideration of the decision.

BACKGROUND:

1. On March 11, 1988, Mr. David Westin of the law firm Wilmer, Cutler, and Pickering filed a petition with the Inter-American Commission on Human Rights (hereinafter the "Commission") on behalf of 105 named petitioners, all individual shareholders of the Banco de Lima, against the Government of Peru. The petition alleges violations of Article 8, 21, 24 and 25 of the American Convention on Human Rights (hereinafter the "Convention") by the Government of Peru. The case arises out of President Alan Garcia's announced plan to expropriate "all of the shares of the Peruvian Banks remaining in private hands" (Complaint, p. 4).

2. The complaint alleges that the government expropriation plan consisted of two parts:

- 1) the executive had introduced legislation in Congress to approve its decision to expropriate the Banks' shares, and
- 2) the executive, while the legislation was pending, announced that his government would move to intervene the Banks. [FN11]

[FN11] The term "intervention" as defined by the petitioners means "the government's wresting of control of the Bank from its owners and managers."

The bill was enacted into law on October 9, 1987 and in Mid-November 1987 the court sent to the shareholders a notice of expropriation filed October 23, 1987 informing the shareholders that the expropriation proceedings had been commenced and summoning the shareholders to respond in court. The expropriation notice did not include any appraisal of the value of the shares and consequently, challenging in court the validity of the proceedings because of the lack of any government appraisal. The complaint states that "the Banco de Lima shareholders are under the constant threat of forcible intervention and expropriation." (Complaint, p. 11).

3. The complaint requests that the Commission issue a Resolution declaring that the Peruvian Government:

- 1) has violated Articles 8, 24 and 25 of the Convention "By selectively denying petitioners and other prompt, simple, and effective recourse to the courts of Peru as previously established by law for vindication of their fundamental rights in connection with the decreed intervention of Banco de Lima and expropriation of the Banco de Lima shares;
- 2) has violated Article 21 of the Convention by wrongfully decreeing the intervention of Banco de Lima and taking action to expropriate the shares of Banco de Lima without any justification in the social interest as defined in the Convention by wrongfully decreeing the intervention of Banco de Lima and taking action to expropriate the shares of Banco de Lima other than in the cases and according to the forms provided in Peruvian law;
- 3) has violated Article 21 of the Convention by wrongfully threatening to take the shares of Banco de Lima after selectively changing the rules for determining compensation to the detriment of Banco de Lima shareholders and resolving that the Peruvian government;
- 4) "immediately comply with all outstanding court orders relating to the decreed intervention of Banco de Lima and the threatened expropriation of its shares;" and that it
- 5) "cease and desist from expropriating the shares of Banco de Lima" (Complaint, pp. 36-38).

4. The Commission transmitted the pertinent parts of the complaint to the Government of Peru on March 17, 1988 with a request for information on the facts referred to and for any observations on the question whether domestic remedies had been exhausted in this case.

5. By note dated June 10, 1988, the Government of Peru sent the Commission a copy of the disputed law and requested an extension of time of 90 days to respond to the complaint due to the "importance of this law and its application." By note dated August 8, 1988, the Government of Peru informed the Commission that it would not have all the information necessary for a response by August 15th, and it requested a second extension of 30 days, beginning on that date. The Commission informed both parties that the requested extension had been granted.

6. During the 74th period of sessions of the Commission, held from September 5-16, 1988, the petitioners, at a hearing on the case held on September 14, 1988, requested the application of precautionary measures pursuant to Article 29 of the Regulations of the Commission maintaining that irreparable damage to the shareholders in the complaint could occur. The Commission resolved to deny the application of provisional measures requested by petitioners on the grounds that "no such decision may be taken without reference to the merits of the complaint, and such a decision would be premature since the Government of Peru has yet to present its response in this matter."

7. The response of the Government of Peru, transmitted to the petitioners on September 21, 1988, stated, in essence, that the law in question was in conformity with the Peruvian Constitution in so far as the Constitution provides that "financial and banking activity must fulfill a social function of helping the

Peruvian economy in its different regions and assist all sectors of activity and of the population in conformity with development plans." The Government of Peru added that this law is also in conformity with the American Convention, which provides in Article 21 that the right to property may be limited "for reasons of public utility or social interest."

8. By letter dated January 9, 1989, the petitioners reiterated their request for precautionary measures in this case, arguing that the shareholders of the Banco de Lima were facing "creeping expropriation" of their assets and were being denied access to effective judicial remedies. The petitioners again asked the Commission to resolve "that the Government of Peru shall not take any action directly or indirectly to expropriate or substantially impair the value of the property interests at stake in this proceeding until such time as the Commission has ruled upon the pending petition or until a further order of this Commission.

CONSIDERING:

1. That the Preamble of the American Convention on Human Rights as well as the provisions of Article 1 (2) provide that "for the purposes of this Convention, 'person' means every human being," and that consequently, the system for the protection of human rights in this hemisphere is limited to the protection of natural persons and does not include juridical persons.

2. That the petitioners base their claim on Article 21 which provides in relevant part as follows:

1. Everyone has the right to use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. Consequently, in the inter-American system, the right to property is a personal right. The Commission is empowered to vindicate the rights of an individual whose property is confiscated, but is not empowered with jurisdiction over the rights of juridical beings, such as corporations or as in this case, banking institutions.

3. That in the judgment of the Commission, the named shareholders of the Banco de Lima, although individuals, have presented this action alleging that the Government of Peru has taken actions to affect the rights of the Banco de Lima. The Commission considers that what is at issue here are not the individual property rights of the individual shareholders, but rather the collective property rights of the company, the Banco de Lima, and that this case is not within the jurisdiction of the Inter-American Commission of Human Rights.

4. That for the above reasons the Commission considers that it does not have to examine the specific factual questions as to whether there has been a deprivation of property of the shareholders of the Banco de Lima, or whether there is only the threat of a possible deprivation.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare inadmissible the complaint presented by Mr. David Westin of Wilmer, Cutler, and Pickering on behalf of the 105 named shareholders of the Banco de Lima against the Government of Peru pursuant to Article 41 (b) of the Regulations of the Commission.