

EC
EUGENIA M.
CARTIN Y ASOCIADOS, S.A.

Eugenia María Cartín
OFFICIAL TRANSLATOR
Agreement 457 of August 17, 1981
La Gaceta N° 172

- TRADUCTORES OFICIALES
- INTERPRETACION SIMULTANEA
- INGLES • FRANCES • ESPAÑOL

English Translation
followed by original

OFFICIAL TRANSLATION

I, Eugenia María Cartín, Official Translator of the Ministry of Foreign Affairs and Worship of the Republic of Costa Rica, named by Agreement N° 457 of August 17, 1981, published in Official Newspaper La Gaceta N° 172 on September 8, 1981, CERTIFY that the document translated –judgment– from **Spanish** into **English** reads as follows:-----

STAMPS AT THE END

05894 -----

Appeal for protection under constitutional rights-----

Date: 10/27/1995 -----

Time: 09:51 AM-----

Drawn up by: CALZADA MIRANDA-----

File 91-003357-007-CO-C N° 5894-95 -----

CONSTITUTIONAL CHAMBER OF THE SUPREME COURT OF JUSTICE. San José, at nine hours and fifty-one minutes on October twenty-seventh, nineteen hundred and ninety-five. -----

Lawsuit for Unconstitutionality filed by Brian Dennis O'Neill, no second last name in virtue of his nationality, annuitant resident number 175-9615-1920, North American, of legal age, married, resident of Guanacaste, in his capacity of President with faculties of universal attorney-in-fact with no limitation of sum, of "Hotel de Playa Andrelitas Sociedad Anonima" against Executive Decree Number 20518-MIRENEM of July fifth, nineteen hundred and ninety-one, published in La Gaceta number 129 of July ninth, of that same year.

WHEREAS:-----

- I. The plaintiff asks the declaration of unconstitutionality of the challenged Decree, He alleges that with the Decree questioned herein, the "National Marine Park Las Baulas de Guanacaste" over land that belongs to his represented, without proceeding to expropriation, nor the previous indemnification demanded, to that effect, by the Political Constitution. That the properties that resulted affected by the Decree challenged were acquired in nineteen hundred and eighty-seven by his power-grantor. That with the procedure claimed are broken the provisions by articles and 45 of the Political Constitution and 21 clauses 1) and 2) of the American Convention on Human Rights or Agreement of San Jose.-----
- II. The matter previous to this action of unconstitutionality is constituted by the appeal for protection under constitutional rights number 2772-V-91.-----

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- III. By resolution of ten hours and twenty minutes of January thirteen, nineteen hundred and ninety-two (visible to folio 21 of the file), the action was given course, granting a hearing to the General Procurator's Bureau of the Republic of Costa Rica and the Ministry of Natural Resources, Energy, and Mines. -----
- IV. The corresponding edicts were published in Judicial Bulletins number 25, 26, and 27, of February 5, 6, and 7, nineteen hundred and ninety-two. -----
- V. The General Procurator's of the Republic of Costa Rica rendered his report visible to folio 35. It indicates that the State, in the case under study, procures to reserve sufficient funds for future expropriations, and that it may only incorporate in its estate the properties affected once they have been acquired, paying, in due time, their just value. That in this case it is not, as the recurrent says when referring to the declaration of national park and protecting zone, of a "de facto expropriation". That the Decree challenged does not expropriate, it only complies what the Forest Law orders legitimately. This Decree tries to assure that the purposes of the Law are fully complied with. That the claimant has not evidenced that the Decree challenged is unreasonable; but rather accepts the thesis of need of the Decree when reasoning that: "The State has, of course, the legitimate right of considering that those private goods should be for the use and enjoyment only of holders, but rather of the corporation of nature as a whole. In this case and it is assumed that there is a legally evidenced public interest". That the action of the State of converting the private goods affected into public goods for the use and enjoyment of society is legitimate, and that its expropriation is what proceeds. That the Decree questioned is not of expropriation, but rather of declaration of national park and protection zone, since that is its function, limit, and juridical reasonableness. After this declaration, the expropriation will result. That since it is not an expropriation decree (without indemnification) alleged constitutional and conventional norms are not broken. That based on the above, the Procurator's Bureau of Costa Rica requests is the absolute declaration – in all its extremes – of the action asks that the action of unconstitutionality filed. -----
- VI. That the Ministry of Natural Resources, Energy, and Mines challenges to folio 25 the hearing granted, stating that the Decree challenged is not, as the claimant says, a "de facto expropriation", when referring to the declaration of national park and protection zone. That the Decree challenged does not expropriate, it only complies with the legitimate orders in the Forest



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Law. This Decree ties to assure that the purposes of the Law be fully complied with. That the main object of the State is to reserve sufficient funds for future expropriations and that it may only incorporate in its State the properties affected once they have been acquired, paying, in due time, their just price. That the State has the legitimate right of considering private goods for the use and enjoyment of society or nature as a whole. In this case, there is legally evidenced public right. That the State's actions are legitimate when wanting to convert the goods affected in public for use and enjoyment of society and what proceeds is expropriation. That the Decree question is not of expropriation but of declaration of a national park and a protecting zone, since this is the juridical function, limit, and reasonableness. After that declaration the expropriation will come. Since it is not an expropriation decree (without indemnification) the alleged constitutional and conventional norms are not broken. That based on what is stated; it requests the absolute declaration – in all its extremes – of the action of unconstitutionality filed. -----

VII. The prescriptions of law have been complied in proceedings. -----

Draws up Magistrate Calzada Miranda, and, -----

WHEREAS: -----

- I. Regarding the admissibility of the action. In deed dated October twenty-eight, nineteen hundred and ninety-one, the claimant explains to the Magistrates of this Chamber, the reasons why he deems unconstitutional the norm challenged, in appeal for protection under constitutional rights number 2772-V-91. Consequently, by existing an outstanding juridical proceeding and having précised the assumed constitutional violations, it is legitimate to act in constitutional seat, in accordance with paragraph first of article 75 of the Law of Jurisdiction. -----
- II. Regarding the depth. Since with the decree challenged there has not been a "de facto" expropriation, as accused, erroneously, by the attorney-in-fact of the claimant in the interposition, and therefore, this Decree is not of "expropriation" without previous indemnification, this Chamber does not consider that there have been constitutional and conventional violations alleged, in virtue of which the action should be disesteemed in all its extremes, as it is in effect stipulated. The Decree questioned, contrary to what the claimant states, does not expropriate any inheritance to his represented, but rather limits to comply what is legitimately ordered by the Forest Law to that respect, assuring that its purposes be fully complied with. The nature of the

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Decree in question is of declaration of a national park and of a protection zone, since that is its juridical function, limit and reasonableness. After that declaration, will come the expropriation.

III. On the other hand, this Chamber does not appreciate either that this Decree be unreasonably challenged, since as it was indicated, it obeys to the purposes that the Law that gave it origin establishes, and consequently, the actions are legitimate, reasonable, and proportional to the actions of the State of converting, under the norm referred to, the private goods in public for use and enjoyment of society and what proceeds, once the proceedings have been complied with, is the expropriation. -----

THEREFORE: -----

The action is declared void. -/-/-/-/-----

Luis Paulino Mora M.-----

President-----

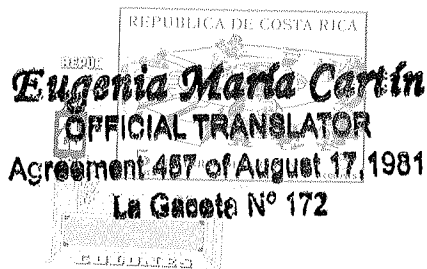
R.E. Piza E. Jorge E. Castro B.-----

Ana Virginia Calzada M. Jose Luis Molina Q.-----

Fernando Albertazzi H. Alejandro Rodriguez V.-----

-----LAST LINE-----

In witness whereof, I extend this official translation from **Spanish** into **English**, consisting of four pages, and sign in San José, on March 07, two thousand and fourteen. Stamps required by law are affixed and cancelled. The reverse side of each page is hereby annulled. -----



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Spanish Original

Sentencia:
05894 Expediente:
91-003357-0007-
CO Fecha:
27/10/1995 Hora:
09:51:00
a.m. Emitido por:
Sala Constitucional

Tipo de Sentencia: De Fondo
Redactor: Ana Virginia Calzada Miranda
Clase de Asunto: Acción de inconstitucionalidad

Amparo Fecha: 27/10/1995
Hora: 09:51 AM
Redacta: CALZADA MIRANDA
Exp. 91-003357-007-CO-C N° 5894-95

SALA CONSTITUCIONAL DE LA CORTE SUPREMA DE JUSTICIA. San José, a las nueve horas cincuenta y un minutos del veintisiete de octubre de mil novecientos noventa y cinco.

Acción de Inconstitucionalidad interpuesta por Brian Dennis O'Neal, sin segundo apellido en razón de su nacionalidad, residente rentista número 175-9615-1920, norteamericano, mayor, casado, vecino de Guanacaste, en su carácter de Presidente con facultades de apoderado generalísimo, sin límite de suma, de "Hotel de Playa Andrelitas, Sociedad Anónima", contra el Decreto Ejecutivo Número 20518-MIRENEM de cinco de julio de mil novecientos noventa y uno, publicado en La Gaceta número 129 de nueve de julio de ese mismo año.

RESULTANDO:

I.-

El accionante solicita que se declare la inconstitucionalidad del Decreto impugnado. Alega que con el Decreto aquí cuestionado se crea el "Parque Nacional Marino Las Baulas de Guanacaste" sobre terreno que pertenece a su representada, sin proceder a la expropiación, ni a la previa indemnización que exige, al efecto, la Constitución Política. Que las propiedades que resultaron afectadas por el Decreto impugnado fueron adquiridas en mil novecientos ochenta y siete por su poderdante. Que con el proceder reclamado se quebranta lo dispuesto por los artículos y 45 de la Constitución Política y 21 incisos 1) y 2) de la Convención Americana sobre Derechos Humanos o Pacto de San José.

II.-

El asunto previo de esta acción de inconstitucionalidad lo constituye el recurso de amparo número 2772-V-91.

III.-

Por resolución de las diez horas veinte minutos del trece de enero de mil novecientos noventa y dos (visible a folio 21 del expediente), se le dio curso a la acción, confiriéndosele audiencia a la Procuraduría General de la República y al Ministerio de Recursos Naturales, Energía y Minas.

IV.-

Los edictos respectivos fueron publicados en los Boletines Judiciales números 25, 26 y 27, de los días 5, 6 y 7 de febrero de mil novecientos noventa y dos.

V.-

La Procuraduría General de la República rindió su informe visible a folio 35. Señala que el Estado, en el caso bajo examen, procura reservar los fondos suficientes para las expropiaciones futuras y que éste, sólo podrá incorporar en su patrimonio las fincas afectadas una vez que las haya adquirido, pagando, en su momento, su justo valor. Que en este caso, no se trata como dice el recurrente de una "expropiación de hecho", al referirse a la declaratoria de parque nacional y zona protectora. Que el Decreto impugnado no expropia, sólo cumple lo mandado legítimamente en la Ley Forestal. Este Decreto trata de asegurar que los fines de la ley su cumplan plenamente. Que el accionante no ha demostrado que el Decreto impugnado sea irrazonable; más bien acepta la tesis de necesidad del Decreto al razonar que: "Claro que el estado tiene derecho legítimo de considerar que esos bienes privados deben ser para el uso y disfrute de los titulares, sino de la sociedad o de la naturaleza en su conjunto. En ese caso, y supuesto que existe interés público legalmente comprobado". Que es legítima la actuación del Estado en convertir los bienes privados afectados en públicos para uso y disfrute de la sociedad y que lo procedente es la expropiación. Que el Decreto cuestionado no es de naturaleza expropiatoria sino declarativa de un parque nacional y de una zona protectora, pues esa es su función, límite y razonabilidad jurídicos. Posterior a esta declaratoria sobrevendrá la expropiación. Que al no tratarse de un decreto expropiatorio (sin indemnización) no se quebrantan los normas constitucionales y convencionales alegadas. Que con fundamento en lo expuesto, la Procuraduría solicita que se declare sin lugar -en todos sus extremos- la acción de inconstitucionalidad interpuesta.

VI.-

Que el Ministro de Recursos Naturales, Energía y Minas contesta a folio 25 la audiencia concedida, manifestando que el Decreto impugnado no se trata, como dice el recurrente, de una "expropiación de hecho", al referirse a la declaratoria de parque nacional y zona protectora. Que el Decreto impugnado no expropia, sólo cumple con lo mandado legítimamente en la Ley Forestal. Este Decreto trata de asegurar que los fines de la ley su cumplan plenamente. Que el Estado tiene como objetivo primordial, reservar los fondos suficientes para las expropiaciones futuras y que éste, sólo podrá incorporar en su patrimonio las fincas afectadas una vez que las haya adquirido, pagando, en su momento, su justo precio. Que el Estado tiene derecho legítimo de considerar bienes privados para el uso y disfrute de la sociedad o de la naturaleza en su conjunto. En este caso existe un evidente interés público legalmente comprobado. Que es legítima la actuación del Estado en convertir los bienes privados afectados en públicos para uso y disfrute de la sociedad y que lo procedente es la expropiación. Que el Decreto cuestionado no es de naturaleza expropiatoria sino declarativa de un parque nacional y de una zona protectora, pues esa es su función, límite y razonabilidad jurídicos. Posterior a esta declaratoria sobrevendrá la expropiación. Que al no tratarse de un decreto expropiatorio (sin indemnización) no se quebrantan los normas constitucionales y convencionales alegadas. Que con fundamento en lo expuesto, solicita que se declare sin lugar -en todos sus extremos- la acción de inconstitucionalidad interpuesta.

VII.-

En los procedimientos se han cumplido las prescripciones de ley.

Redacta la Magistrada Calzada Miranda, y, CONSIDERANDO:

I.-

Sobre la admisibilidad de la acción. En escrito fechado veintiocho de octubre de mil

