

Juan Carlos Marín  
Law Report  
Executive Summary

Juan Carlos Marín González holds a Ph. D. in Law from Universidad Carlos III, Madrid. He is a procedural and civil law professor and Research Fellow at Mexican Autonomous Institute of Technology. He is also a Research fellow at Justice Studies Center from Universidad de Chile. Mister Marín is author of several publications on procedural and civil law, including five books. He obtained his lawyer degree from Universidad de Chile.

The main conclusions of his report are the following:

1° *“[...] with the concession of the no innovation order the Court of Appeal, at the request of the appellant in the first petition of their writ, has deprived Anglo American – temporarily at least – of their property rights over the Anglo American Sur S.A. shares in question and its guarantee to be able to carry out perfectly licit economic activity.”*

2° *“The Chilean Judiciary has, then, a magnificent opportunity to renew the jurisdiction of the State of Law in Chile, the external independence of its judges, a solid jurisprudence with regards to protection and, very importantly for the nature of this case, the extraordinary vocation of a country that respects the property rights of foreign companies located in Chile. The celebrated phrase ‘There are still judges in Berlin’ is more applicable to this case than ever. As is well known, Frederick II the Great, King of Prussia, had ordered the demolition of an old windmill which spoiled the view from his magnificent palace. The windmill owner involved took legal measures to defend his interests and the judge condemned the monarch to pay damages and compensation and to rebuild the windmill. Contrary to the general belief that he would refuse to submit to the sentence, the king exclaimed, satisfied: ‘I rejoice to see that there are still judges in Berlin.’”*

3° *“In my opinion, the protection motion in question should be rejected by the Court of Appeal of Santiago, because it is not an appropriate measure for resolving a exclusively property-based conflict between two parties. On this point, only one piece of jurisprudence exists in the Superior Courts of Chile. The best national doctrine is clear on this respect. This action does not serve to interpret or set the reach of contractual causes, or even less to establish permanent rights in favor of the parties.*

*Secondly, it must be rejected because in the current state of the dispute it is very doubtful that Codelco has any right over the property in question. The reach it*

*has attributed to the clauses in the contract is very forced. Indicative of this is the fact that whilst Anglo American has emphasized the literal terms of the clauses in dispute, Codelco emphasizes spirit and good faith in its interpretation. In any case there is no unquestionable right as is required by the uniform jurisprudence already mentioned.*

*Thirdly, it should be rejected because Anglo American has committed no arbitrary or illegal act which deserves to be reproached by our legal system. It has protected, as would anyone else, the powers of its legitimate property right over the shares which it holds in Anglo American Sur S.A.*

*Additionally, none of the guarantees invoked by the appellant – property, special commissions and economic freedom – have been endangered by the sale which Anglo American has carried out of shares in this dispute.*

*To the contrary, if the present measure were adopted, Anglo American's guarantees to property and economic freedom would be seriously infringed, and the Chilean Judiciary would be seriously damaged."*

4° *"The sale of Anglo America can in no way be considered an act of self-guardianship or the execution of deeds presented as a fait accompli. No status quo has been altered."*

5° *"If Anglo American is prevented, as is currently occurring with the no innovation order issued in the writs, from transferring its shares, its property rights will temporarily be expropriated, or at least limited in one of their attributes. This situation is illegal and arbitrary. It is due to this that, in this frame of mind, it is Anglo American which has been deprived of its constitutional guarantees to carry out licit economic activity. The status quo favors Anglo American and not Codelco. The law favors the owner and not the person with a mere expectation. The no innovation order issued has not maintained the present situation, but altered it dramatically. The Court should understand that, provisionally, at least, Codelco wishes to deviously rewrite the contract which binds the parties, using the law courts to do so."*

6° *"The no innovation order, as a precautionary measure in an urgent process, should be lifted during the course of the proceeding or, during the definitive ruling as soon as the writ action has been discarded. It was erroneously issued for the reasons already presented. Furthermore, the reports of the appellants and the legal reports already added to the process are sufficient evidence to proceed with the lifting of this order."*

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