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# The James Stone Case

Peru's fight to recover assets.

OSCAR SOLÓRZANO

# Introduction

On 14 September 2024, Peru's former dictator Alberto Fujimori passed away. His corrupt legacy, however, is far from over. More than 20 years after Fujimori left power, criminal proceedings are still ongoing, and the Peruvian justice system continues its work to recover a significant amount of assets linked to acts of corruption perpetrated during his administration.

Drawing on the author's experience in providing technical assistance to the Peruvian authorities, this brief case study focuses on one such asset recovery case between Peru and Luxembourg involving a businessman named James Stone. It provides insight into some of the challenges that some States face in recovering proceeds of corruption from international financial centers, despite the binding rules and soft laws adopted in recent years. It looks at both the mutual legal assistance (MLA) process and the legal defenses raised by the account holder – who admitted to the corrupt dealings and has since fled to the United States. The case offers important lessons for States either holding or seeking to recover assets linked to historical acts of corruption.

## **CRIMINAL ORGANIZATIONS: THE ROLE OF JAMES STONE**

James Stone Cohen, a Peruvian–U.S. citizen, was a member of a group of businessmen who pleaded guilty to having been an intermediary in a sophisticated corruption scheme involving the acquisition of airplanes, weapons, and military equipment during the Fujimori regime. Stone and the other members of the group also admitted to facilitating the incorporation of offshore structures and establishing banking relationships in Panama, Switzerland, and Luxembourg, where the illicit commissions – amounting to millions of dollars – were hidden.

In a plea agreement with the Peruvian justice system in October 2005, Stone explained the modus operandi of the criminal organization and the way in which the illicit commissions were paid into international bank accounts. For his collaboration, Stone received a lenient suspended sentence of four years' imprisonment as a primary accomplice to the crimes of unfair collusion and criminal organization, a fine of USD 50,000, and the

obligation to repatriate the accounts he held abroad (two in Switzerland and one in Luxembourg). He was also ordered to pay a civil reparation of USD 1.2 million to the Peruvian State.

Stone fled the country in 2017 after the court authorized him to travel to the U.S. for health reasons. As a result of his failure to return to the country, the various criminal proceedings against him still pending in Peru have been reserved (suspended) until he is located, for which an international arrest warrant has been issued.

Stone reappeared in the [media](#) in 2022, when in the context of the global Pandora Papers project, the International Consortium of Investigative Journalists revealed the existence of Lovindale Estates Corp., an offshore legal structure that he managed with his mother and siblings at the time the acts of corruption took place, and which was unknown to the Peruvian authorities. The report revealed that Stone was living in luxury in Miami and that in recent years he had developed a series of very profitable businesses in Peru and in the U.S.

## REPATRIATION OF ACCOUNTS

The 2005 plea agreement between Stone and the Peruvian justice system specified that Stone must take “all necessary actions” to repatriate three bank accounts through international cooperation. Failure to do so would result in the revocation of the collaboration agreement.

Two accounts, account 226290 of Leumi-le Israel Bank and account 16.715 of Fibi Bank, were in Switzerland, both in the name of Elena Group Ltd., a legal structure controlled by Stone and his group of accomplices. The Peruvian authorities repatriated USD 13.8 million from the two Swiss accounts through waivers or transfer orders issued by the account holder (Stone) to the recipient financial institutions. This was achieved swiftly thanks to efficient international cooperation with Switzerland, supported by a pre-existing international cooperation agreement in criminal matters between the two countries.

In Luxembourg, account 152279 with Union Bancaire Privée de Luxembourg (formerly Discount Bank) was held in the name of Stone and his wife. The funds in this account also originated from Elena Group Ltd. and amounted to just over USD 1 million when it was seized in 2004. The collaboration agreement with the Peruvian justice system established beyond reasonable doubt the illicit nature of the account and ordered Stone to take positive and specific actions (such as issuing waivers) to make effective the repatriation of the funds.

This account, however, could not be repatriated in 2005. Mutual legal assistance documents from that time show that Switzerland was asked to repatriate the account, probably because it was initially frozen by Switzerland. Faced with the impossibility of repatriating an account that was not in its territory, the Swiss authorities responded negatively. Due to other obstacles, including Stone's lack of cooperation, the repatriation of this account fell into oblivion.

It was not until 2017 that the account reappeared in the Peruvian judicial system in the context of an investigation initiated by the specialized prosecutor's office for non-conviction-based forfeiture in Lima. Despite the long passage of time, it was decided to seek the enforcement of the original 2005 collaboration agreement instead of initiating a new non-conviction-based confiscation procedure when the investigation had been definitively closed. Following the declaration by Peruvian Judge Eduardo Torres that the agreement was still valid, Peru requested its enforcement in Luxembourg in 2018.

A series of legal disputes initiated by Stone succeeded in delaying the matter of repatriation of account n.º 152279 for nearly six years. Finally, at a public hearing on 2 May 2024, the Luxembourg District Court declared enforceable in Luxembourg the Peruvian decision ordering the confiscation of the account. It stated that the 2 of May 2024 exequatur ruling "entails the transfer to the State of the Grand Duchy of Luxembourg of ownership of the confiscated funds, with accrued and future interest, in the above-mentioned account, unless otherwise agreed with the requesting State or unless an arrangement is reached between the Luxembourg Government and the Government of the requesting State".

The Peruvian authorities have recently been informed that Stone has appealed the exequatur ruling of Mai 2024.

## INTERNATIONAL COOPERATION

The international enforcement of judgments in Luxembourg (exequatur proceedings) is carried out in accordance with articles 659 to 668 of the Code of Criminal Procedure of Luxembourg (CPPL). It is a model of direct enforcement of foreign judgments involving two judicial instances which, through adversarial proceedings, seek to enforce the foreign judgment without re-litigating the facts underlying the proceedings in the State of origin.

The judge of the exequatur is bound by the findings of fact made by the authorities in the requesting State (art. 666 CPPL). For this reason, it was not possible for the asset holder (James Stone) to attack the merits of the case. In particular, it was not possible to review the Peruvian authorities' determination of the illicit nature of the assets under dispute.

There were however still three challenges to overcome: issues around dual criminality, appeals on the basis of human rights and due process, and the alleged expiry of the judgement given the length of time that had passed.

## DUAL CRIMINALITY

The formal and substantive conditions for the admission of the request for judicial cooperation are, however, thoroughly analyzed in Luxembourg. One issue relates to the principle of dual criminality, which requires that the conduct prosecuted in the State of origin is also a criminal offence in Luxembourg.

The Luxembourg judges held that the facts described in Peru's request for mutual legal assistance corresponded in the Criminal Code of Luxembourg (CCL) to facts that could be classified as criminal organization (art. 324<sup>bis</sup> and 324<sup>ter</sup> CCL), active and passive corruption (art. 246 et seq. CCL) and embezzlement (art. 240 CCL). In other words, the facts upheld against Stone by the Peruvian authorities would have given rise to criminal prosecution if they had been committed in Luxembourg.

Similarly, under art. 31(2)(1) CCL, special confiscation applies to property which constitutes the proceeds or any pecuniary advantage derived from an offence. It follows that the assets under dispute would be liable to confiscation under Luxembourg law in similar circumstances.

## HUMAN RIGHTS AND DUE PROCESS

Stone fought an extensive legal battle in the Luxembourg courts between 2018 and 2024, using the two ordinary judicial instances provided for in the exequatur proceedings.

Among the different arguments put forward by Stone's defense in Luxembourg, it is worth noting those that sought to discredit the Peruvian proceedings over deficits with regard to international standards of human rights and due process. As it is customary in international asset recovery proceedings that do not review the merits of the case, Stone's defense argued that there had been various irregularities related to notice, procedural defenses and other deficits in the fair trial rules of the domestic proceedings. Often these arguments are raised to label the domestic proceedings as abusive in relation to human rights, knowing that this would paralyze the exequatur in the requested State.

Close coordination between the authorities of both countries was instrumental in determining the Peruvian authorities' compliance with the rules of fair trial and other international standards. Key elements, such as the notification of judicial acts or the characteristics of the local proceedings, could be quickly clarified in coordination meetings held in the framework of international judicial cooperation.

These coordination meetings were highly relevant as Peru was not a party to the exequatur proceedings in Luxembourg. Therefore, the Luxembourg magistrate – the executing authority representing the Peruvian interests – required as many elements as possible from the Peruvian proceedings in order to effectively defend the position of Peru.

## ALLEGED EXPIRY OF THE JUDGEMENT

Another striking aspect of Stone's defense is the argument claiming that the right of Peru to confiscate and repatriate the account, as ordered in the plea agreement of 2005, had expired. According to Stone, this right had lapsed due to the passage of time and the inactivity of the Peruvian authorities since 2005. The discussion took place initially in two instances in the Peruvian courts, in which Stone's Peruvian lawyers attacked the decision requesting the enforcement of the confiscation and repatriation of the account. The same argument was raised in the Luxembourg execution proceedings.

Stone's defense argued that the 2005 effective collaboration agreement – which ordered the repatriation of the accounts within 40 days – was final, and that Peru's inaction “extinguished” or invalidated its ability to recover the account. To reinforce the argument, Stone argued that in 2009 a Peruvian court had granted him “rehabilitation” and the resulting erasure of his criminal record, rendering any attempt to confiscate the account legally unfounded.

In response to Stone's appeal, the Superior Court of Lima ruled in 2020 that the effective collaboration judgment was final and that it was not possible to invalidate a judgment that has become *res judicata*. The Court observed that any subsequent act ordered by the Peruvian authorities to comply with the collaboration agreement was not subject to appeal as they were not new or independent decisions. It stated, for example, that international judicial cooperation seeking the enforcement of Peruvian confiscation decisions abroad is of an administrative nature, for which there are no legal avenues for opposition in the Peruvian Code of Criminal Procedure. The Court therefore concluded that the decision should be enforced.

Additionally, in relation to the alleged lapsed right of the Peruvian State to recover the account, the Court pointed out that one reason the confiscation was not carried out at the time was the behavior of Stone himself, whose defense filed repeated appeals that delayed the process of recovering the account. Finally, the Court noted that collaboration agreement compelled Stone to carry out positive actions to repatriate the account, such as signing waivers or transfer orders addressed to the recipient banks. However, Stone had remained silent and inactive for more than a decade, probably hoping



that the seizure of his account would fall into oblivion and expire in the Luxembourg proceedings as well.

## SUMMING UP

This case exemplifies some of the obstacles involved in the return of proceeds of corruption from foreign financial centers to requesting States. In particular, it highlights:

- That without experience or resources to engage in lengthy international cooperation to recover assets, requesting States may simply give up when faced with obstacles. As a result, corrupt funds that could and should be repatriated may remain in the ownership of the criminals who stole them until, for example, the statute of limitations prevents States from recovering them.
- That corrupt individuals tend to dispose of powerful defense teams that can delay asset recovery proceedings for years and use up significant public resources in the ongoing judicial wranglings.
- That States seeking to recover illicit assets from abroad must take all possible measures to ensure the alignment of laws and practices with international standards of human rights and due process, to prevent legal appeals based on such arguments.
- That close coordination between the authorities of the requested and requesting States is absolutely key to the success of any international asset recovery effort. In this case, it helped to efficiently clarify issues of law and procedure that might otherwise have paralyzed proceedings and left the ill-gotten assets in the hands of the corrupt individual.

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## AUTHOR



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Oscar Solórzano is the Head of the Latin America office and a Senior Asset Recovery Specialist at the Basel Institute on Governance. He has worked closely with authorities in Peru and throughout Latin America, and in global financial centers, in an effort to drive changes in governments' capabilities to recover proceeds of corruption from overseas jurisdictions.