

Compañía de Aguas del Aconquija S.A.
& Vivendi Universal v. Argentine Republic
(ICSID Case No. ARB/97/3)

Introductory Note

The Decision of October 3, 2002 reproduced below concerns a proposal for the disqualification of the President of the *ad hoc* Committee made by the Argentine Republic in the above annulment proceeding. It was the first time a proposal for disqualification of an *ad hoc* Committee member had been made in an ICSID proceeding. In this connection, an important clarification made in the Decision concerns the applicability of the disqualification procedures of the ICSID Arbitration Rules in annulment proceedings. By virtue of Arbitration Rule 53, which calls for the provisions of the Rules to apply *mutatis mutandis* to any procedure relating, *inter alia*, to the annulment of an award and to the decision of the Committee, the provisions of Arbitration Rule 9, on the disqualification of arbitrators, were found to apply in this case. Accordingly, since the proposal related to only one member of a three-member Committee, the proposal was considered by the other members of the Committee.

Another important aspect of the Committee's Decision concerns the applicable standard for disqualification found in Article 14 of the ICSID Convention, as read together with Article 57 of the Convention. In particular, the Decision examines the requirement of a "manifest lack of the qualities" set forth in Article 14, in circumstances where the facts invoked for the proposal are "established and no further inference of impropriety is sought to be derived from them." (Paragraph 25 of the Decision) The quality referred to in the proposal was the ability to exercise independent judgment. The facts involved specific, unrelated and limited legal work being done for an affiliate of the claimants by a partner in the firm of which the President is a member. Among the factors considered by the

Committee was the full disclosure of the relationship by the President in his declaration made under Arbitration Rule 6 (2), and the furnishing of further information on request, “thus maintaining full transparency.” (Paragraph 25 of the Decision) On its examination of the facts and applicable standard, the Committee found that the President’s independence was in no way impaired. Although not necessary for this conclusion, the Committee suggested that a *de minimis* rule would have provided a further basis for it.

The Decision is reproduced in its English and Spanish versions, these being the two procedural languages in this case. Professor Christoph Schreuer’s commentary on Article 57 of the ICSID Convention can be found at 14 *ICSID Review—Foreign Investment Law Journal* 521 (Fall 1999).

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