

Compañía de Aguas del Aconquija S.A. & Compagnie
Générale des Eaux v. Argentine Republic
(ICSID Case No. ARB/97/3)

Introductory Note

The award rendered on November 21, 2000 in *Compañía de Aguas del Aconquija S.A. & Compagnie Générale des Eaux v. Argentine Republic* (ICSID Case No. ARB/97/3) concerns a dispute arising out of an investment for the provision of water and sewer services in the Argentine province of Tucumán. Those services were privatized by the provincial government, which, after a public tender, awarded the concession in 1995 to a consortium led by Compagnie Générale des Eaux, of France (now known as Vivendi). Difficulties began, however, soon after the services were taken over under the concession. A number of measures were taken by a new provincial administration which the investors regarded as undermining the concession. The dispute evolved to a point where the concession was ended and the service handed back to provincial authorities.

The claimants initiated ICSID proceedings on the basis of the 1991 Argentina-France bilateral investment treaty, relevant provisions of which are reproduced in an appendix of the award. The provisions of the treaty include a “fork-in-the-road” clause, under which an investor may submit disputes with the host state under the treaty either to that state’s “national jurisdictions” or to international arbitration, but not to both. The arbitration mechanisms foreseen by the treaty are those of the ICSID Convention and the UNCITRAL Arbitration Rules. The types of investment covered by the treaty include concessions. The treaty contains no provisions, however, expressly referring to the political subdivisions of a Contracting Party (unlike, for example, the Argentina-United States BIT, or the investment provisions of the NAFTA). The underlying concession agreement contained a forum selection clause under which all disputes under the

concession were to be submitted to the exclusive jurisdiction of the administrative tribunals of the province of Tucumán.

The Argentine Republic raised objections to jurisdiction which, after written pleadings and a hearing, were joined to the merits of the case. The award, while upholding the tribunal's jurisdiction, ultimately dismissed the claims, holding that they should have first been submitted to Tucumán courts under the concession agreement's forum selection clause. In March 2001, the claimants submitted an application for the annulment of the award under Article 52 of the ICSID Convention. That application is currently pending.

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