

CASES

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

Introductory Note

On November 21, 2000, the Arbitral Tribunal in the case of *Compañía de Aguas del Aconquija S.A. and Compagnie Générale des Eaux v. Argentine Republic* (ICSID Case No. ARB/97/3), rendered an award dismissing the objections to jurisdiction brought by the Argentine Republic, as well as the claims brought by the Claimants under the 1991 Argentine-France Bilateral Investment Treaty (BIT). The Tribunal dismissed the claims on the merits on the basis, *inter alia*, that they involved alleged breaches of the Concession Contract concluded by Compagnie Générale des Eaux (now Vivendi Universal), and its Argentine affiliate, Aguas del Aconquija S.A., with the Argentine Province of Tucumán, which contained an exclusive jurisdiction clause in favor of the Tucumán's administrative tribunals.¹

On March 20, 2001, the Centre received an application by the Claimants for the annulment of the award. The Secretary-General registered the application on March 23, 2001. The *ad hoc* Committee (the Committee) in this case, appointed in accordance with Article 52(3) of the ICSID Convention, was composed of Professor James Crawford, an Australian national, Professor José Carlos Fernández Rozas, a Spanish national, and Mr. Yves Fortier, a Canadian national, who served as President of the Committee.

¹ The November 21, 2000 award was published, with the consent of the parties, in the ICSID's Review-FILJ, volume 16, number 2, Fall 2001, and in the ICSID's website at <http://www.worldbank.org/icsid/cases/awards.htm>.

In its application, the Claimants raised three of the five grounds for annulment of an award under Article 52(1) of the ICISD Convention. The Claimants alleged that: (a) the Tribunal had manifestly exceeded its powers; (b) the award had failed to state the reasons on which it was based; and (c) there had been a serious departure from a fundamental rule of procedure.

The Committee found that there was no basis for finding any departure from a fundamental rule of procedure. However, the Committee held that the Arbitral Tribunal had manifestly exceeded its powers by upholding its jurisdiction to hear the Claimants' claims brought under the BIT, but not deciding on a significant portion of those claims. Finally the Committee found that there was no need to consider the allegation of a failure to state reasons for the claims affected by an excess of powers. In the Committee's view, reasons were given for the remaining part of the award. On these basis, on July 3, 2002, the Committee issued a decision partially annulling the Arbitral Tribunal's award of November 21, 2000.

On August 16, 2002, the Argentine Republic submitted to the Centre a request for a supplementary decision and rectification of the Committee's annulment decision on the basis of Article 49(2) of the ICSID Convention. According to the Argentine Republic, the Committee failed to decide upon an omission made by the Arbitral Tribunal regarding one of the arguments made by the Argentine Republic during the arbitral proceeding. In addition, the Argentine Republic argued that there were seven material errors in the decision, all of them related to the Committee's descriptions of some of the arguments and positions made by the Argentine Republic during the annulment proceeding. After considering the request and the parties' further submissions, the Committee denied the Argentine Republic's request for a supplementary decision and granted two of the rectification requests made by the Argentine Republic.

The text of the Committee's annulment decision and the Committee's decision on a supplementary decision and rectification are posted on ICSID's website at www.worldbank.org/icsid. The text of these decisions are also reproduced below with the parties' consent.

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