



INVESTIGATING THE IMPACT OF CORPORATE COURTS ON THE GROUND – THE TRUTH IS OUT THERE!

CASE NAME:

ANGLIAN WATER V ARGENTINA

SUMMARY:

Water company sued when Argentina froze water prices during a financial crisis

STATUS:

Anglian Water won

AT STAKE:

£13 million (of a total award of £251 million)

DETAILS:

Case started April 2003 using an Argentina-UK investment deal; arbitrators gave their decision in April 2015



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The 'Palace of Running Water,' (*Palacio de Aguas Corrientes*) or the Water Works Building on Córdoba Avenue in Buenos Aires.

WHAT IS THE CASE ABOUT?

Argentina began privatising public services, including water and sanitation, in 1989. In 1993 water in Buenos Aires was sold to a consortium called Aguas Argentinas made up of four foreign corporations: the British company Anglian Water, French companies, Vivendi and Suez and Spanish company, Aguas de Barcelona.

In 2001, Argentina went through a severe financial crisis. The poverty and unemployment rates skyrocketed. In Buenos Aires the number of people living below the poverty line increased by 26% in a year; in the country as a whole it went up by 50%. One of the measures that the government took in response was to freeze the rates companies could charge for water, electricity and other utilities, in order to support access to essential services. The government also ended the fixed exchange rate between the Argentinian peso and the US dollar, allowing the peso to devalue. Corporations profits were lower as a result of both of these actions.

In the next few years many lawsuits were brought against Aguas Argentinas for poor service for everything from lack of water pressure, to bills charged for services that weren't provided, to damage to buildings from rising groundwater. There was a rise in water borne diseases which the consumers' association, ADUCC described as a public emergency. Government testing showed that "43 of the 151 water sources used by Aguas Argentinas had more than the permitted level of nitrates in their water, suggesting that the water has not been filtered properly".

Aguas Argentinas responded by saying it hadn't been able to invest because of the price freeze.

In 2006, the government revoked Aguas Argentinas' contract on the grounds that they had not fulfilled their obligations for levels of investment and for quality of the water service. A survey at the time found that 83% of the public supported this decision.

The water services in Buenos Aires were brought back into public hands, to be run by a state owned water company, AYSA. This operated a 'social tariff' policy to support low-income households.

CORPORATION'S COMPLAINT

Anglian Water and the other three corporations in Aguas Argentinas sued the Argentinian government over the freezing of water prices. There were technically three cases, each brought separately under investment deals that Argentina had with the UK, France and Spain, but the three were heard in one tribunal.

Anglian Water and the others argued that they had a right to expect that the terms of the contract by which the water services were privatised in 1993, would continue unchanged for the 30 years of the contract. The freezing of tariffs broke their expectations.

A group of human rights organisations got permission to submit an 'amicus curiae' brief to the tribunal. Meaning 'friend of the court', this is a document offering advice and expertise on a case.

This explained that human rights law requires that Argentina adopt measures to ensure access to water to the population, including that it is affordable. The freezing of the water tariffs during an economic crisis allowed the population to have access to water and sanitation. Thus the measures were necessary to comply with Argentina's requirements under human rights law.

However the tribunal did not agree that human rights obligations should take precedence over the investment treaty.

The tribunal found in favour of Anglian Water and the other investors. It ordered Argentina to pay a total of £251 million to the four corporations, of which £13 million was for Anglian Water.

The Binding Treaty

Corporate courts enable companies to enforce their privileges under investment law in countries across the world. However there is no way to enforce corporations' duties under international law. Often multinational corporations evade responsibility for actions outside of the countries where they are based.

There is now a negotiating process underway at the United Nations for a legally binding UN Treaty on Transnational Corporations. If successful, this could provide one means of holding corporations to account.

OUR VERDICT

There should be a hierarchy in international law. Human rights law, labour law and international environmental law should be able to trump investment treaties.

Human rights, workers' rights and environmental law need to be enforceable. At present, trade and investment treaties have hard enforcement measures that can impose heavy fines on countries, such as in this case. This tribunal asserted that Argentina needed to respect all areas of law equally but as the tribunal is only responsible for investors rights, that is all that it went on to consider.

Investors should be required to bring such cases in national courts, rather than in their own 'corporate courts'. Judges in a national court would have to balance all the government's legal obligations, weighing up the public interest against private interests.

A government should be able to change its regulations especially in the face of changing circumstances and crises and should not have to face punitive measures simply because of corporate contracts. Yet this is exactly what ISDS does.

Investor-State Dispute Settlement (ISDS,) or 'corporate courts', gives corporations far reaching privileges and access to their own legal system to enforce them. This mechanism threatens society, democracy and the planet.
STOP ISDS!

