

Questions & Answers

Why is this case important?

- This will be the first case in which a judgment will be issued regarding a country's decision to revert the privatization of its pension system. Its result may set a precedent for other ongoing cases or for future lawsuits.
- An international conviction against Argentina may impact the political discussions in other countries that are evaluating reforming or ending the privatization of their pension systems. It may also have a dissuasive effect on states that are debating ending the privatizations of other human rights, such as access to public services, education, health, etc.
- Privatizing may be good for business, but it does not work to guarantee that all people live in dignity and enjoy their human rights equally and without discrimination. For this reason, in different parts of the world, privatization reversals are taking place in various areas such as energy and water supply, waste collection, transportation, education, health and social services.

Was the privatized system in Argentina that bad?

- Yes, it was terrible. It ended up being more expensive for the State and creating a system that excluded many pensioners or kept them in poverty while corporations benefited from the business of managing millions of pesos for financial speculation.
- The privatized and individually funded system only brought unfulfilled promises and company profits:
 - o The public deficit associated with the pension system tripled in the first 7 years of privatization.
 - o The administrative costs related to the pension system grew from 6.6% of contributions in 1990 to 51% in 2002.
 - o This was partly possible due to the oligopolistic nature of the market: at the time of the privatization there were 24 AFJPs (the private administrators) and by the end of the experiment there were only 10.
 - o The percentage of senior citizens covered by the pension system also decreased. More than 12% of the elderly were expelled from the pension system.
 - o The amounts of pensions lost 10.6% taking into account inflation.

What is the ICSID?

- The International Center for Settlement of Investment Disputes (ICSID) is an international arbitration center that depends on the World Bank.
- Some investment and free trade agreements have established that if there is a dispute between a foreign investor and the State where it operates, ICSID must resolve. The claims are ruled by an ad-hoc arbitration tribunal, made up of three arbitrators specialized in international trade and investment law. Each party designates one and the third is agreed.
- Since the mid-1990s, Investor-State arbitration (ISDS) cases have multiplied thanks to the proliferation of international trade and investment treaties that allow companies

to sue States internationally. These treaties offer very broad rights for transnational corporations to sue the States for impacts on their investments.

- In the case of MetLife, the treaty that gives ICSID jurisdiction is the Bilateral Investment Treaty between the United States and Argentina, signed in 1991.

Who can sue at the ICSID?

- Only transnational companies can sue. Neither national investors in their own country nor the people affected by the activities of transnational corporations can sue at the ICSID.
- In some cases, the treaties allow companies to engage legal action without having passed through national courts first.

What do companies claim at the ICSID?

- In many cases, companies sue for the loss of profits when States change their regulations in order to guarantee the rights of their population and the environment.
- Environmental rules on extractive industries, measures to counter climate change and policies aimed at reducing tobacco consumption are examples of the regulations challenged by companies.

What is MetLife claiming?

- It's a secret. The arguments and reasons why MetLife alleges that the US-Argentina BIT was breached are not public, nor is the State's defense or the amount of the compensation pursued by MetLife. The only public fact is the existence of the case. The lawsuit was filed four years ago and has been conducted at all times behind closed doors.

How are States doing at the ICSID?

- Bad. Usually, they lose.
- In 70% of the cases, the investor wins when it sues. In 42% of the cases, the States have to pay compensation because of a ruling that orders so, while in 28% of the cases, the claims are settled by out-of-court agreement between the parties. Argentina is the most sued country in the world, in many cases due to the measures taken to alleviate the 2001 crisis (of the 25 lawsuits that began in 2003 at ICSID, 20 were against Argentina).
- Out of all the lawsuits against Argentina, only in five cases has the tribunal ruled in favor of the State. In 88.9% of the cases, Argentina has had to pay to the investor. Until 2019, it has had to pay 9 billion dollars.

What role do the petitioning organizations play in this process?

- In February 2021, the organizations requested leave to intervene as non-disputing third parties in the ongoing process. They also requested access to the content of the file and the calendar of the process.
- Although MetLife objected, the tribunal allowed the petition, but it was very restrictive. On the one hand, it restricted the topics on which the organizations may intervene. On the other, it refused to grant access to the pieces of the file.

- This is representative of an opaque and undemocratic dispute resolution system, in which States are drawn into processes that, in their practice, are secret, and in which society has virtually no participation.