Argentina Achieves a Key Turn in the YPF Case in the U.S. and Shifts the Axis of International Litigation

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The recent ruling of the United States Court of Appeals for the Second Circuit introduces a profound shift in the case arising from the expropriation of YPF, one of the most significant litigations of recent decades in matters of state liability and international markets. Far from being a mere procedural relief, the decision entails a structural displacement of the dispute: the approximately USD 16 billion judgment issued in 2023 by Judge Loretta Preska has been set aside.

The key to the ruling does not lie in a reassessment of the facts or in a reinterpretation of the alleged breach of the company's bylaws, but rather in a prior and decisive issue: jurisdiction. The appellate court held that the dispute should not be adjudicated in the United States. In other words, it did not rule on whether Argentina was required to launch a tender offer following the 2012 expropriation, but on something more fundamental: whether U.S. courts were the proper forum to resolve the controversy.

This shift is far from minor. For years, the debate focused on the conduct of the Argentine State vis-à-vis minority shareholders. The first-instance decision had separated the act of expropriation—clearly sovereign—from the alleged breach of corporate obligations, which it characterized as a commercial activity. That distinction allowed the application of the exception provided under the Foreign Sovereign Immunities Act, thereby opening the door to the judgment.

The Second Circuit, however, adopts a more restrictive approach. In its reasoning, the alleged breach cannot be analyzed in isolation from the sovereign act that gave rise to it. And if the core of the dispute lies in a state decision taken in Argentina, governed by Argentine law, the connection to the U.S. market—while relevant—is not sufficient to justify the intervention of its courts.

The consequence is immediate and highly significant: the judgment is set aside, and with it, the enforcement measures that had begun to take shape, including the potential attachment of assets linked to the company. Argentina thus ceases, at least for now, to stand in the position of a State compelled to face one of the largest financial judgments in its history.

However, the ruling does not bring the dispute to a close. What it does is reconfigure it. The case does not disappear, but it changes terrain. And in litigation of this magnitude, the terrain is often decisive.

As a specialist in international contracts, it is important to emphasize that an implicit or functional extension of jurisdiction cannot always be presumed, particularly when a company becomes publicly exposed following the acquisition of a controlling 51% stake, as occurred with YPF. Legal counsel errs when addressing a matter of such magnitude without properly submitting to the framework of federal administrative litigation laws.

For Burford Capital, the litigation funder behind the claim, whose economic expectations were directly tied to enforcement of the judgment in the United States, the scenario becomes considerably more complex. The possibility of seeking review before the U.S. Supreme Court exists, but it is limited and exceptional. Alternatively, the claim could be redirected to another forum, albeit with greater uncertainty and reduced leverage. In this new context, the opening of a negotiation phase under entirely different parameters cannot be ruled out. This significant lack of precise legal analysis has dealt a substantial blow to the company, with its shares falling 36% as of 11:35 a.m. on March 27, 2026.

Beyond its immediate consequences, the ruling sends a message that transcends the YPF case. In a global environment where litigation against States increasingly expands into jurisdictions perceived as favorable to investors, the Second Circuit introduces a meaningful limit: the internationalization of markets does not, in itself, entail the automatic internationalization of jurisdiction.

From this perspective, the decision not only benefits Argentina in this particular case but also partially redefines the balance between state sovereignty and judicial oversight in transnational contexts.

Argentina has not yet prevailed on the merits. But it has achieved something that, in international litigation, can prove decisive: shifting the dispute away from the forum where it stood at its greatest disadvantage. And in disputes of this nature, that move is not a mere technical detail—it is often the turning point.