

THE LEGAL DEBATE REGARDING THE AFJPS

Nationalization Feeds Griesa's Suspicions

The judge handling the holdouts' complaints said not to trust in the behavior of Argentina. Experts maintain that the legal situation could worsen once the structure of the pension funds' administrators change.

In photographs, he has the air of Robert Sanders, the judge on the television show "Boston Legal" played by Shelley Berman. Nevertheless, when issuing orders he demonstrates the same strength and conviction of Alan Shore, the Crane, Poole, & Schmidt lawyer brought to life by James Spader in the same television series.

In real life, Thomas Griesa shares with these characters space on Wikipedia and, perhaps, not much else. While currently this season's episodes of the show find the actors discussing the rights of fathers to abort or hugging as a sexual act, the New York federal judge is infuriating the Argentine state.

Just after learning of the intent to nationalize the administration of AFJP funds, the judge froze the accounts of the then Administrators in response to the claims before him initiated by creditors against of Argentina who did not accept the debt restructuring proposed by Argentina.

"It is about 300 million dollars," confirmed the head of Anses, Amado Boudou, in a recent interview.

In response to publication of the freezing order, the American law firm Baach Robinson & Lewis, PLLC, which maintains an office in Buenos Aires, distributed a statement arguing that intervening in the litigation in order to demonstrate that they

are distinct legal entities from the Argentina state was to the AFJPs' advantage.

At the other end of the continent, Luiz Vizioli, a partner at Vizioli & Triolo Abogados, analyzed from the webpages of the specialized publication *elDial.com* the pension funds' situation. "The general rule is that, pursuant to international agreements to which the United States was a party at the time of the promulgation of FSIA (Foreign Sovereign Immunities Act), foreign states are immune to the jurisdiction of its tribunals. This general principle does have various exceptions," he wrote, and added that among those exceptions is the waiver of immunity, which is the case with regard to the sovereign debt of Argentina.

With this in mind, he continued, "the responsibility of the foreign state is similar to that of an individual in similar circumstances, except for different liability with regard to punitive and compensatory damages."

Within this framework, Griesa, a Southern District of New York judge, ordered the freezing of assets that the AFJPs and ANSES had in the United States up to a total of US\$553 million, which is the sovereign debt claimed by Aurelius Capital Partners, LP, Aurelius Capital Master, Ltd., and Blue Angel Capital I LLC.

"I don't want to wake up Friday and confirm that the

assets were transferred out of New York," he later stated during the hearing with the lawyers of the Administrators, the ANSES, and the Argentinean State, prior to approval of the transfer by the AFJP.

If that were to happen, continued the judge, "a fraud would be committed against its legitimate creditors and this Court has the right to act in order to avoid the risk of that happening."

With the reform approved by Argentina's congress, the pension funds were transferred to the State, and with them, the duty to defend them before the judge who handles all of the lawsuits involving the Argentinean default-related debt in the federal district of New York.

From a legal point of view, noted some experts, the asset freeze which was defeatable when the administrators were private, could now become much more difficult to defend against.

To emphasize this point, some Argentine lawyers have said that one of the United States' law firms representing the national State in that country, would be evaluating the possibility of opening offices in Argentina, not just with the idea of developing business in Argentina but also to guarantee fee payments against Griesa's freezing order.