

# Argentina liable over revoked gaming licence

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A divided ICSID tribunal has ordered Argentina to pay US\$22 million to an Austrian casino group over the revocation of a gaming licence, with a dissenting arbitrator saying the measure was a legitimate response to the investor's failure to observe rules aimed at preventing money laundering.

In an [award](#) on 5 November, tribunal chair **Hans van Houtte** of Belgium joined with German academic **Stephan Schill** in upholding claims by two companies in the Casinos Austria group under the Austria-Argentina bilateral investment treaty.

The majority found Argentina liable for an unlawful expropriation because of a provincial regulator's decision to revoke an operating licence held by the claimants' local subsidiary Enjasa, and the transfer of its business to new operators.

Casinos Austria was awarded US\$22 million plus interest at a rate of 4% per annum compounded annually from 2013. It also won its legal fees and arbitration costs, which together came US\$6 million – subject to compound interest at the same rate. GAR understands that the award is worth around US\$36 million in total.

Argentina's appointed arbitrator, Spanish jurist **Santiago Torres Bernárdez**, issued a [dissenting opinion](#) (at 193 pages, almost as long as the award itself), saying that there had no breach of the BIT. He said that the provincial regulator had acted in line with national and international law.

Casinos Austria was represented by a team from Austrian firm Knoetzl led by partner **Florian Haugeneder**, who brought the case with him from Wolf Theiss in 2016. Argentina used government lawyers.

The dispute concerned actions by the regulator for the gaming sector in the northern Argentine province of Salta. In 2013, the regulator revoked Enjasa's exclusive 30-year licence to operate gaming facilities and lottery activities in Salta following allegations by the federal government that it had violated anti-money laundering regulations.

Casinos Austria alleged that the revocation of the licence, followed by the transfer of its gaming and lottery operations and personnel to new gaming operators, was an arbitrary exercise of power. It also argued the measure was intended to benefit local gaming operators and increase Salta's revenue from gaming.

The group brought the ICSID claim in 2014, seeking over US\$50 million in damages plus compound interest.

In 2018, the tribunal largely [upheld jurisdiction](#) over the claims, holding that that Casinos Austria had a qualifying investment in Argentina under the ICSID Convention and the BIT. Torres also dissented at that phase.

In the final award, van Houtte and Schill said that while they had not found a breach of due process, the regulator had behaved with arbitrariness and a lack of proportionality and "did not properly use its regulatory, supervisory, and police powers" when it revoked the licence.

This had the effect of "destroying" Casinos Austria's investment and qualified as an indirect expropriation under the BIT, they said.

The majority found that the expropriation was unlawful as the revocation "did not comply with the requirements international law sets for an internationally lawful exercise of the host state's police power."

Having held Argentina liable on that basis, the majority said it did not need to rule on whether there was also a breach of the BIT's fair and equitable treatment standard.

Torres argued that there could not have been an indirect expropriation as the revoked asset – the administrative rights of a licence – "was not, by its nature, liable to any kind of expropriation in the Argentine legal system of the Province of Salta."

He said the revocation measure was a sanction imposed on Enjasa because of its "previous violations" of its obligations as a licensee after the conclusion of ordinary administrative proceedings.

Torres argued the majority had “absurdly” only focused on the effect of the revocation, without considering the regulator’s powers. “The purpose of any sanction, by definition, is to cause an adverse effect on the party being sanctioned,” he said. The majority decision had the effect of giving the investors “an immunity which does not exist under international law”.

Van Houtte and Schill fired back in a footnote in the award, saying that Torres “incorrectly” came to this point of view despite them having explained that they did not consider the effects of the revocation to be the “sole criterion for the existence of an indirect expropriation”.

Haugeneder said his team is "extremely proud" of the achievement for their client. Argentina's Procuraduría del Tesoro de la Nación was also contacted for comment.

### *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic* (ICSID Case No. ARB/14/32)

#### Tribunal

- **Hans van Houtte** (Belgium) (chair)
- **Stephan Schill** (Germany) (appointed by Casinos Austria)
- **Santiago Torres Bernárdez** (Spain) (appointed by Argentina)

#### Tribunal secretary

- **Alicia Martín Blanco**

#### Counsel to Casinos Austria

- Knoetzl

### Partners **Florian Haugeneder** and **Emmanuel Kaufman** in Vienna

- Wolf Theiss (until 2016 when Haugeneder left to set up Knoetzl)

### Partner **Florian Haugeneder** in Vienna

#### Counsel to Argentina

- Procuraduría del Tesoro de la Nación

### **Carlos Alberto Zannini, Horacio Pedro Diez** and **Sebastián Antonio Soler** in Buenos Aires

#### Experts for Casinos Austria

- **Howard Rosen** of Secretariat International
- **Eddie Tobis** of FTI Consulting

- **Fernando García Pullés** of Estudio O'Farrell
- **Alberto B Bianchi** of Bianchi Galarce & Castro Videla
- **Liban Kusa Bruchou** of Fernández Madero & Lombardi

#### Experts for Argentina

- **Ernesto Alberto Marcer**
- **Zenón Alberto Biagosch**
- **Guillermo Coombes** (assistant to Biagosch)
- **Hernán Del Debbio** (assistant to Biagosch)
- **José Pablo Amadeo Dapena**

## Documents

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The award



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The dissent



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