CASE REPORT

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Award Name and Date: WCV World Capital Ventures Cyprus Ltd. & Channel Crossings Ltd. v. Czech Republic, PCA Case No. 2016-12 – Award – 26 July 2023

Case Report by: George Jacob***, Editor Ignacio Torterola****.

Arbitral Tribunal: Juan Fernández-Armesto (President), Stanimir Alexandrov (Arbitrator), Marcelo Kohen (Arbitrator)

Claimant's Counsel: Redacted (Three Crowns, France), Redacted (Bankside Chambers, New Zealand), Redacted, (Barbora Šnáblová advokátní kancelář, Czech Republic)

Respondent's Counsel: Prof. Eduardo Silva Romero (Dechert, Paris), Ms. Audrey Caminades (Dechert, Paris), Ms. Raphaelle Legru (Dechert, Paris), Mr. Jago Chanter (Dechert, Paris), Mr. Quentin Muron, Erica Stein (Stein Arbitration, Belgium)

1. Relevant Facts

The dispute in this case revolves around the investment made by the Claimants in the Czech Republic, specifically in the gaming industry.

The Claimants, WCV World Capital Ventures Cyprus Ltd. and Channel Crossings Ltd., are companies based in Cyprus and part of the Synot Group. This group operates in various sectors, including gaming, and holds investments in multiple countries, including the Czech Republic.

Between 2006 and 2009, the Claimants acquired two Czech companies: Synot W, a manufacturer and distributor of gaming devices, and Synot TIP, an operator of sports betting,

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casino games, and lotteries. These two companies, collectively referred to as the "Operating Companies," were central to the dispute.

The Operating Companies developed and operated two types of gaming systems in the Czech Republic: the Centralized Lottery System (CLS) and Local Lottery System (LLS), both of which used Interactive Video Terminals (IVTs). The CLS, introduced in 2004, allowed players to access games through terminals that were remotely operated and connected via an internet-based network. The LLS was introduced later, in 2008, and involved a smaller number of connected terminals.

The Claimants were granted various permits by the Czech Ministry of Finance to operate these gaming systems. The first CLS permit (Master Permit) was issued in 2004, and a second one followed in 2007, allowing the Claimants to operate hundreds of terminals across different locations. LLS permits were granted in 2009. These permits were granted for a period of ten years and were considered renewable. By 2011, Synot TIP operated thousands of terminals throughout the Czech Republic under these permits.

Between 2011 and 2013, a series of regulatory changes and court decisions drastically altered the legal framework governing gaming devices in the Czech Republic. In 2011, the Czech Constitutional Court, in decisions related to several municipalities (e.g., Chrastava, Františkovy Lázně, and Kladno), upheld the right of municipalities to regulate or prohibit gaming devices in their territories. The court ruled that municipalities could impose restrictions via local decrees and that these regulations took precedence over pre-existing gaming permits.

The Czech Parliament passed an amendment to the Lotteries Act in 2011 in response to gambling concerns. This amendment introduced new definitions for gaming devices, extended regulatory power to municipalities, and allowed them to issue decrees limiting or banning the operation of gaming terminals.

In 2013, the Constitutional Court annulled a transitional provision that had previously protected existing permits from being immediately affected by municipal decrees. This ruling allowed municipalities to cancel existing gaming permits, further complicating the regulatory environment for the Claimants.

These regulatory changes, particularly the 2013 court decision, led to the termination of many of Synot TIP’s location permits. Municipalities began issuing decrees that prohibited or restricted the operation of gaming terminals.

The Claimants argue that these changes breached the Czech Republic’s obligations under the Bilateral Investment Treaty (BIT) between Cyprus and the Czech Republic. They claim the measures negatively impacted the value of their investment in the gaming industry, particularly their direct and indirect shareholdings in the Operating Companies.

2. Procedural History

On September 24, 2015 Claimants filed a Request for Arbitration (RfA) pursuant to Article 8(2) of the BIT and Article 3 of UNCITRAL Rules. (¶26) On February 23,2016 Claimants transmitted to the Arbitral Tribunal the RfA. (¶27) Claimants filed their Statement of Claim on

27 May 2016. (¶30) On August 5, 2016 Respondent filed Memorial on Jurisdiction and Request for Bifurcation. On August 26, 2016 Claimant submitted their Response to Request for Bifurcation. On 6 September 2016, the Tribunal issued a Decision on Request for Bifurcation which bifurcated Objection 3-6 and addressed separately from Objections 1 and 2 which were joined to merits phase. (¶40) On April 25 2018, the Tribunal delivered its First Interim Award rejecting Objections 3 to 6. (¶44) On December 18 to 19, 2019 the Tribunal held the hearing on the intra-EU BIT objection raised by Respondent. On 29 September 2020, the Tribunal rendered its Second Interim Award, dismissing the Intra-EU Objection. (¶52) On September 20, 2021 the Tribunal and the Parties held a pre-hearing conference. (¶62) On April 12, 2022 Claimants provided their list of witnesses and experts of Respondent for cross-examination, on the same date, Respondent provided its list of witnesses and experts of Claimants for cross-examination. (¶72) On January 23, 2023 Respondent requested permission from the Tribunal to submit a brief response to C-SC, as they considered it contained arguments on costs. (¶95)

3. Position of Parties

3.1 Fair and Equitable Treatment (FET) Standard

3.1.1 Whether the Regulatory Changes Performed by the Czech Republic Constitute by themselves a breach of FET standard?

3.1.1.1 Claimants' Position

The Claimants allege that the FET standard was breached by the Czech Republic due to two reasons – firstly because it failed to act in a consistent manner and maintain a transparent regulatory regime and secondly due to its arbitrary and unreasonable conduct breaching international law obligations. (¶202)

3.1.1.1.1 Czech Republic Failed to Act in a Consistent Manner and Maintain a Transparent Regulatory Regime

Failure to act consistently: Claimants contend that the Czech Republic's regulatory actions were inconsistent. Initially, the Ministry of Finance granted Synot TIP long-term permits to operate gaming devices, with assurances that it was the sole regulator. However, shortly after, the Czech Republic through several conflicting measures - through the 2011, 2013 Constitutional Court decisions, amendments to the Lotteries Act to allow municipality decrees to restrict operations of gaming devices, the decrees issued by the municipalities and the premature termination of permits breached Article 2(2) of the Bilateral Investment Treaty (BIT), failing to uphold the State's earlier commitments. (¶205)

Failure to maintain a stable regime: Claimants argue that the Czech Republic failed to maintain a stable and transparent regulatory regime. They highlight that, after 2011, the regulatory framework changed drastically: the Ministry of Finance lost its exclusive control over gaming devices, with municipalities gaining the power to terminate location permits through decrees without clear guidelines. This regulatory shift was abrupt, as permits were immediately subject to these municipal decrees, and a three-year transitional period originally provided was revoked by the Constitutional Court in 2013. (¶208)

Failure to maintain a transparent regime: Claimants assert that the Czech Republic failed to maintain transparency by not clearly outlining the legal requirements for investors. After 2011, the regulatory system became opaque and unpredictable. Key issues include: municipalities were not required to follow due process or provide reasons for their decisions; operators could not challenge municipal decrees; and how the Czech Republic provided no clear guidelines on how municipalities should exercise their regulatory power, leaving operators uncertain about the rules and criteria affecting their investments. (¶209)

3.1.1.1.2 Czech Republic Breached its Obligation not to act Arbitrarily or Unreasonably

Claimants argue that the Czech Republic acted arbitrarily in regulating gaming devices. Municipalities issued decrees without objective criteria, often ignoring guidelines from national authorities. The 2011 and 2013 decisions replaced a clear regulatory framework with chaotic measures, undermining the rule of law. Claimants assert that the Constitutional Court extended municipal powers beyond the Lotteries Act's original intent, failed to respect permit holders' rights, and misinterpreted the law to revoke permits. Additionally, the Court provided no rational policy for shifting regulatory power from the Ministry of Finance to municipalities, and the changes lacked proportionality. Claimants conclude this breached Article 2(2) of the BIT. (¶214-217)

3.1.1.2 Respondent's Position

Respondent argues that it has persistently acted in a consistent manner and has maintained a stable and transparent regulatory regime and that neither itself nor its organs ever acted arbitrarily or unreasonably.

3.1.1.2.1 Czech Republic acted in a consistent manner and there was no expectation of a stable or transparent regulatory environment

Czech Republic acted in a consistent manner: The Czech Republic argues it acted consistently regarding Claimants' investments. Legally, it contends that: firstly, that the Claimants misinterpret the obligation to act consistently, as State organs are not bound to interpret the law uniformly, especially if an interpretation is incorrect. Secondly, that the Constitutional Court has the authority to reinterpret laws and guide other State bodies. Thirdly, the international law is not violated when domestic courts make decisions, and States are not required to act consistently over time without specific commitments, nor does evolving legal interpretation breach fair and equitable treatment (FET). Factually, the Czech Republic highlights a "dual framework" in which both the Ministry of Finance and municipalities had roles in regulating gaming devices. The Constitutional Court's 2011 and 2013 decisions were in line with its earlier case law and did not significantly change the system, as the Ministry continued to issue permits while considering municipalities' views. The power shift to municipalities through decrees was a natural extension of this framework, foreseen in Master Permits from the beginning. (¶219-231)

Czech Republic did not fail to maintain a stable regime: The Czech Republic argues that, under international law, absent specific commitments, there is no generalized expectation of regulatory stability. Investors should anticipate that legal frameworks may change unless explicit promises are made. To breach a treaty, the changes must be drastic and unforeseeable,

such as a complete transformation of the legal and business environment or a radical and unreasonable shift in regulations. In this case, the Czech Republic asserts that no such breach occurred. The regulatory changes post-2011 were gradual, not radical, and there is no significant difference between the regimes under the Lotteries Act and the Gaming Act introduced in 2017. Therefore, the threshold for breaching the BIT has not been met. (¶232-235)

Czech Republic did not fail to maintain a transparent regime: The Czech Republic argues that transparency is not an absolute obligation and that exercising regulatory authority can override transparency concerns. A lack of transparency alone does not breach fair and equitable treatment (FET); additional factors like arbitrariness or procedural unfairness are required. Each case must be assessed based on its specific facts. In response to Claimants' allegations, the Czech Republic asserts that the municipalities operate within a legal framework governed by the Lotteries Act, Administrative Procedure Code, and Municipalities Act, ensuring due process and transparency. Legal interpretations were provided in advance to guide municipalities' regulation of gaming devices. Additionally, operators like Synot TIP have initiated legal challenges against municipal decisions, demonstrating that these decisions can be contested in court. (¶236-237)

3.1.1.2.2. Czech Republic did not act Arbitrarily or Unreasonably

The Czech Republic argues that neither it nor its organs acted arbitrarily or unreasonably. It contends that arbitrariness requires a high threshold, involving actions that shock judicial propriety through bias or disregard for the rule of law. The State also emphasizes the deference international law gives to domestic authorities to regulate internal matters, asserting that as long as a measure serves a legitimate purpose, is rational, and free from bias, it cannot be considered arbitrary.

The Czech Republic provides two key reasons for its actions: firstly, the municipal decrees were issued in a non-arbitrary manner, and any controversial regulations were subject to thorough scrutiny. Secondly, the Constitutional Court's 2011 and 2013 decisions were necessary, suitable, and not excessive, aiming to resolve conflicts between municipalities and the Ministry of Finance, clarify legal interpretations, and promote public health and order.

Additionally, the Czech Republic refutes the claim that the Constitutional Court acted unreasonably or arbitrarily, stating that it merely clarified a preexisting legal situation rather than imposing retroactive or biased measures. (¶238-244).

3.1.2. Did the Czech Republic create and then breach Legitimate Expectations?

3.1.2.1. Claimants' Position

Claimants argue that the Czech Republic failed to protect their legitimate expectations, which is a core part of the fair and equitable treatment (FET) standard. They base their claims on two primary expectations: Firstly, "Exclusivity Representation" - Claimants expected that the Ministry of Finance would remain the sole regulator for gaming terminals, based on consistent assurances and legal opinions they obtained as part of their due diligence. However, this expectation was breached when the 2011 and 2013 Constitutional Court decisions allowed

municipalities to regulate gaming devices through decrees, contradicting earlier Ministry-issued permits. (¶310)

Secondly, "Renewability Representation" - Claimants expected their 2007 Master Permit would be renewed from 2017 to 2027 if compliance was maintained. However, instead of a straightforward renewal, they were forced to apply for a new permit, which lacked authorization to operate gaming terminals. (¶310)

Claimants argue that they made significant investments based on these expectations, and the Czech Republic's actions—particularly the shift in regulatory power and the refusal to renew permits—violated these legitimate expectations.

3.1.2.2. Respondent's Position

The Czech Republic rejects the Claimants' assertion of legitimate expectations, arguing the following key points:

Conditions for Legitimate Expectations: Legitimate expectations must be reasonable in context and arise from specific assurances. Expectations cannot arise after the initial investment and must be based on explicit legal obligations which are present in such as contracts or concessions, not general laws or permits.

Claimants' Expectations at the Time of Investment: At the time of their 2006 investment, Claimants could not have had legitimate expectations because: (1) Municipalities were already playing a role in regulating gaming devices, (2) there was an ongoing dispute between the Ministry of Finance and municipalities, which could lead to municipal regulation and (3) the Master Permits did not provide specific assurances.

Lack of Due Diligence: The Czech Republic argues that Claimants failed to conduct adequate due diligence. Had they done so, they would have understood the shared regulatory authority between municipalities and the Ministry of Finance, and the unresolved scope of municipal regulatory power.

3.1.3. Did the Czech Republic Fail to Protect Claimants' Acquired Rights?

3.1.3.1. Claimants' Position

Claimants argue that the Czech Republic failed to protect their acquired rights, which is a principle of international law that requires compensation for any deprivation or interference, even in cases of reasonable regulatory changes. The Claimants assert that the Master Permit granted by the Ministry of Finance created acquired rights for operating gaming devices, which should have been respected even if the regulatory framework changed.

Due to this acquired right, the 2011 Constitutional Court Decisions should have been applied prospectively to avoid retroactive impact on existing permits. Furthermore, the three-year transitional period provided by the 2011 Amendment was insufficient and he Constitutional Court's subsequent annulment of this transitional period left permit holders immediately vulnerable to local regulations.

Additionally, the Municipalities issued Decrees that restricted gaming, leading to the withdrawal of Location Permits that the Claimants had acquired.

3.1.3.2. Respondent's Position

The Czech Republic acknowledges that acquired rights are a fundamental principle of public international law, requiring indemnification for unlawful expropriation. However, it disputes the application of this principle in this case.

Acquired Rights Not Automatically Protected: The Czech Republic argues that acquired rights are not inherently protected under the Bilateral Investment Treaty (BIT) and are only relevant in determining breaches of legitimate expectations or unlawful expropriation.

Claimants' Failure to Demonstrate Acquired Rights: The Czech Republic asserts that Claimants have not proven the existence of acquired rights. It also claims that the determination of acquired rights is governed by national law and that domestic court decisions should be relied upon.

Permits and Local Public Order: The Claimants' permits were issued under the Lotteries Act, which allows for revocation if circumstances arise that would have precluded their issuance. The Location Permits did not grant acquired rights since they could be revoked based on local public order issues.

The respondents claimed that the 2011 Decisions of the Constitutional Court merely clarified existing laws and did not violate any acquired rights, as they were consistent with the legal framework.

Inadequacy of Transitional Period: The cancellation of the three-year transitional period did not impact acquired rights, as the period itself was argued to be in breach of Czech law.

Benefitting from Transitional Period: The Czech Republic contends that Claimants had the benefit of a transitional period before their permits were revoked, undermining their claims of unfair treatment.

3.2. Full Protection and Security (FPS) Standard

3.2.1. Claimants' Position

Claimants argue that the FPS obligation requires the host State to take necessary measures to ensure both the legal and physical security of investments. They contend that liability for failing to provide FPS is strict.

The Claimants maintain that the 2011 and 2013 Decisions, along with amendments to the Lotteries Act, resulted in unclear criteria for operators regarding the potential termination of their permits by municipalities. This has led to a systemic failure in issuing Decrees that adhere to objective, non-discriminatory, and pre-announced criteria.

Due to this unclear regulatory environment, the Claimants argue that there is a significant lack of legal security, making it challenging for operators to anticipate how their permits will be handled.

The Claimants dispute the Respondent's argument that the FPS obligation is only triggered by a threat to the physical integrity of the investment. They assert that this perspective reflects a minority view, while most cases recognize that the FPS standard encompasses legal protection and legal security as well.

3.2.2. *Respondent's Position*

Criteria for FPS Breach: The Respondent states that a failure to provide protection contradicts the FPS standard only when: (1) There is a threat of permanent impairment to the physical integrity of the investment. (2) The measures to prevent this impairment are lawful. (3) The measures are reasonable under the circumstances.

No Threat to Investment: The Respondent contends that there was no actual threat to the Claimants' investment, asserting that even if such a threat existed, the Claimants have not demonstrated what legal measures could have been taken by the Respondent to address it.

Rejection of Claimants' Interpretation: The Respondent disputes the Claimants' claim that the FPS standard generally extends to include legal protection and legal security, asserting that this view is not widely accepted in investment cases.

4. Tribunal's Analysis

4.1. Fair and Equitable Standard

4.1.1. Did the Regulatory Changes Performed by the Czech Republic Constitute by themselves a breach of Fair and Equitable Treatment (FET) Standard?

4.1.1.1. Whether Czech Republic Failed to Act in a Consistent Manner and Maintain a Transparent Regulatory Regime

Article 2 of the BIT lays down the FET standard - however, nowhere in the Article or the preamble of the BIT is there any mention of the obligation to maintain a stable, predictable and transparent regulatory framework. (¶265)

The tribunal found that despite there being no mention of any such express obligation in the BIT, there were case laws such as *Merrill & Ring Forestry LP v Canada*[2], that established that the FET standard requires regulatory stability. (Para 269-272). Furthermore, relying on the *Metalclad*[3] tribunal it described the transparency obligation of FET while it relied on the

[2] *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No UNCT/07/1, Award dated 31 March 2010 (Doc. CL-292)
[3] *Metalclad Corporation v. The United Mexican States*, ICSID Case No ARB(AF)/97/1, Award dated 30 August 2000 (Doc. CL-43).

Tecmed[4] tribunal decision to highlight the consistency obligation in FET. (Para 273-274). Thus, the Tribunal found that the Czech Republic had a duty to maintain a stable regulatory framework under FET even if there is no specific reference to such a duty. (¶293).

The introduction of the novel gaming devices introduced legitimate doubt on whether such games are to be considered as subject to municipal authorisation or as innominate games, under the supervision of the Ministry of Finance. The Claimants's investment was made during a time when there was no settled regulator regime but when multiple authorities had a role in regulating gambling. (¶286).

Though, there were changes in the regime, the main characteristics of the regulatory regimes such as - the requirement of Master and Location Permits to operate Gaming Devices, the Ministry of Finance being in charge of issuing Master Permits and the imposition of Decrees by municipalities to restrict or prohibit operation of Gaming Devices have remained unaltered from the time of the investment to the present and cannot thus be classified as unpredictable and opaque. (¶291-292). Hence, there is no violation of the Republic's duty to act consistently, maintain a stable and transparent regulatory regime. (¶294)

4.1.1.2. Whether Czech Republic breached its obligation to not act arbitrarily

The Claimants' allegation that the Decrees issued by Municipalities and the Constitutional Court decisions were done so in an arbitrary manner is false and there is no violation of Article 2 of the BIT. (¶304).

Regarding Arbitrariness of Issuance of Decrees by Municipalities: Municipalities issue Decrees based on their self-governing powers, however, this power to issue Decrees is not unlimited, there are sufficient safeguards to limit the possibility of arbitrary actions by municipalities (¶296) - Czech law mandates that the Decrees must be issued in accordance with procedure mentioned in the Municipalities Act and involves stakeholder participation in decision-making. Additionally, the municipalities are bound to follow the Czech Constitutional Court's case-laws which lay down constitutional principles such as transparency and participation in decision-making.(¶297) The Municipalities Act also mandatorily require the Decrees to be submitted for review to the Ministry of Internal Affairs to verify that the Decrees conform to the applicable legal framework and constitutional principles - in case of non-compliance, the Ministry also has the power to remedy such non-compliance. (¶298)

Furthermore, the Ministry of Internal Affairs has issued guidelines concerning the issuance of Decrees in general and also guidelines specifically regarding gambling. The Office of Protection of Competition too has released guidelines for Decrees regarding the different type of restrictions.

A third level of safeguard also exists for operators of Gaming Devices in the form of challenges to the decisions of Ministry of Finance before Supreme Administrative Courts, a measure that the Claimants have already used. (¶300). These safeguards were found to be sufficient to ensure that the Decrees issued by the municipalities were not arbitrary.

[4] *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States* ICSID Case No ARB (AF)/00/2, Award dated 29 May 2003 (Doc. CL-66).

Regarding arbitrariness of the 2011 and 2013 Court Decisions: Following the introduction of the Gaming Devices, there was on-going debate on the right of municipalities to regulate Gaming Devices via Decrees. This involved a constitutional question regarding division of power which entitled the Constitutional Court to adjudicate the matter. The matter was adjudicated on legal standards and on reasoned judgement and hence no arbitrariness can be found.

4.1.2. Did the Czech Republic Create and then Breach Legitimate Expectations

The Tribunal stated that "legitimate expectation" arises when a State makes specific representations/assurances (not general laws) to induce foreign investment. A foreign investor (narrow class of investors) relies on these assurances to make their investment. The State then adopts a position that contradicts their specific assurances which results in frustration and injury to the investor.

These Tribunal outlined the principles of legitimate expectation and proceeded to a two-part analysis to address the Claimants' arguments. The first part - "*Exclusivity Representation*" - dealt with the legitimate expectation that the Ministry of Finance is the "sole and exclusive regulator" for Terminals. The second part - "*Renewability Representation*" - concerned the legitimate expectation that the Claimants' permit would be renewed. (¶310).

4.1.2.1. Exclusivity Representation

The Claimants submitted six different legal opinions they obtained from several lawyers, prior to making an investment, as proof of legitimate expectation. The Tribunal found that these legal opinions simply represented that the Claimants did their due diligence before investment. Furthermore, the legal opinions stating that the Ministry of Finance was the sole authority for regulating terminals, was qualified and did not give rise to legitimate expectations. This is because the opinions were issued by independent lawyers and did not contain representations or specific assurances by the State as required, to constitute legitimate expectation. (¶354).

4.1.2.2. Renewability Representation

The Claimants allegation that the terms of the 2007 Master Permit gave rise to legitimate expectation of renewability of the Permit (including the associated Location Permits authorising Terminals at specific locations), was rejected by the Tribunal. It found that the Master Permit's terms only stated that an operator could apply for an extension of the permit's validity. This was not automatic as each extension required a separate administrative proceeding for assessment by the Ministry of Finance. (¶360)

The language used in the Permit was found to not make any specific assurances regarding maintenance of the same number (or a minimum number) of Location Permits for the Terminals. It merely stated that the additional Location Permits was to be approved on the basis of uniform procedure - i.e., separate administrative proceedings were required for approval of further Location Permits. (¶363).

The Tribunal thus found that the two claims of - exclusivity representation and renewability representation did not give rise to any legitimate expectation to the investor. Due to this, the State's conduct could not have amounted to a breach of FET standard.

4.1.3. Did the Czech Republic Fail to Protect the Claimants' Acquired Right?

Acquired rights are individual rights vesting on an investor under a legal instrument (such a contract, license, permit) following municipal law of the investor. These acquired rights are protected under international law against any impairment

This right under international law is tempered by each State's sovereign right to regulate itself. The State simply needs to ensure that the State adopt reasonable and proportionate measures to compensate the holder or set off the loss suffered by the investor. One such measure could be a reasonable duration as a "transitional period" during which the investor could still enjoy their acquired rights. (¶397). The Tribunal relied on cases such as the *AMCO Tribunal*[5] decision which held that by receiving authorisations, the company was bestowed with acquired rights and *Magyar Farming Tribunal*[6] decision which upheld the principle that changes to a legislation should not affect the vested acquired rights.

To find whether a breach of FET standard occurs through violation of acquired rights - the Tribunal engaged in a two-step analysis. Firstly, whether an investor possessed an acquired right and secondly whether such acquired rights were impaired.

4.1.3.1. Whether Acquired Rights Existed?

The Tribunal examined whether the Claimants' 2007 Master Permit was an acquired right and found that the terms of the Master Permit created specific rights in favour of the named beneficiary (the Claimants' group company). The Tribunal found that the Permit granted the Claimants, - the right to operate certain electronic lottery systems within Czech Republic for a period of 10 years at certain locations. This Permit constituted a title of acquisition which vested acquired rights onto the Claimants as per Czech national laws. (¶411)

4.1.3.2. Whether Acquired Rights were Impaired?

The Czech Republic changed the laws concerning lottery machines when the Constitutional Court in 2011 declared that Municipals had the authority to issue Decrees to restrict Terminals in their jurisdiction. This led to the Parliament promulgating an amendment in 2011 which included a grandfathering clause to provide for a transitional period. This clause permitted Location Permits (issued prior to January 2012) to continue in force and prevented the municipal Decrees from affecting them for 3 years. The Tribunal found this transitional period of 3-years to be a reasonable period for the operators to write off their investments or adapt to the regulatory changes effectively. (¶421-422)

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[5] *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No ARB/81/1, Award dated 20 November 1984 (1992) 89 ILR 368 (Doc. CL-270).

[6] *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary*, ICSID Case No ARB/17/27, Award dated 13 November 2019 (Doc. CL-268).

Even if the 3-year transitional period was dismantled by the 2013 Constitutional Court decision, the Tribunal found that the Claimants had benefitted from a de facto transitional period of 3 years while the Ministry of Finance had slowly started its administrative process of cancelling the Location Permits. Furthermore, even during the administrative process, the Location Permits remained in force. Due to this, even though the acquired rights of the Claimants were not properly protected, the claim failed due to the fact that the Claimants enjoyed a reasonable duration as transitional period affording protection to their acquired rights. (¶423-424)

4.2. Full Protection and Security (FPS) Standard

The Tribunal summarily dismissed of the FPS claim. It found that FPS claim was based to the same arguments as the FET claim for arbitrariness and unreasonable decision. Due to this, the Tribunal reiterated its earlier findings concerning the presence of sufficient guardrails regarding issuances of Decrees by Municipals to state that the FPS claim too must be dismissed as arbitrary or discriminatory conduct was not present on the respondent's part. (¶442)

5. Costs

The Tribunal decided that administrative costs should be equally shared between the parties while each party would bear its own legal costs in full. (¶473) This was because the Tribunal found that both parties were partially successful – the Claimant having successfully established the Tribunal's jurisdiction and the Respondent victorious on the merits. (¶472-473)