



NATIONAL COUNCIL FOR RADIO & TELEVISION

GAMBLING ADVERTISING RULES IN THE ECJ CASE LAW

Georgios Anagnostaras

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THE EU REGULATION OF GAMBLING SERVICES

- Provision of gambling services → Falls principally under Article 56 TEU (freedom to provide services) but also under Article 49 TEU (freedom of establishment)
- The national legislature is in principle allowed to impose additional restrictions on the provision of gambling services from operators licensed in other member states, so long as the applicable national rules pursue a legitimate public interest objective in a consistent and systematic manner [Liga Portuguesa (C-42/07)]
- Hence, member states are given a considerable latitude:
 - ▣ To decide which gambling services they will allow in their national territory
 - ▣ To choose whether the provision of those services will be made subject to the imposition of a public monopoly or to the granting of a limited/unlimited number of licences to gambling operators
- In any event, the imposition of any legislative restriction must pursue a genuine public interest objective in a consistent and systematic manner

GAMBLING REGULATION AND ADVERTISING

- That requirement for consistency and systematicity introduces in practice an interrelation between the applicable gambling rules and the advertising of gambling services
- There must be therefore some coherence between the legislative restrictions that a given member state imposes on the provision of gambling services and the level of advertising of those services that it allows in its national territory
- Hence, it is not in principle permissible to impose very severe national restrictions on the provision of gambling services and to encourage at the same time an expansionist advertising policy by their licensed providers
- Conversely, it seems in principle impermissible to impose very severe restrictions on the advertising of gambling services and to introduce at the same time a very liberal legislative and regulatory regime as regards the provision of those services in the national territory

RELEVANT EU GAMBLING ADVERTISING CASE LAW

1. May a member state lawfully preclude the advertising of games of chance offered by gambling operators not authorized to provide their services in its national territory, even if these operators are legally licensed in another member state?

Otto Sjöberg & Anders Gerdin (Joined Cases C-447/08 & C-448/08)

- Such a legislation is not precluded, to the extent that its effect is to restrict consumers participation in gambling by introducing a national licensing system that excludes from this sector all private profit making interests

Sportingbet PLC and Internet Opportunity Entertainment Ltd (Case C-166/17)

- Such a legislation is not precluded, to the extent that it is also permissible to prohibit the unlicensed offer of games of chance provided by operators legally licensed in another member state

RELEVANT EU GAMBLING ADVERTISING CASE LAW

2. May a member state lawfully restrict the number of gambling operators licensed in its national territory, even if it allows those national concessionaires to engage in intensive advertising campaigns?

- Since the objective of protecting consumers from addiction to gambling cannot be in principle reconciled with a policy of expanding games of chance characterized inter alia by the intensive advertising of those games, such a policy cannot be regarded as being consistent unless the scale of the unlawful gambling activity in the member state concerned is significant and the measures adopted are aimed at channelling consumers propensity to gamble into activities that are lawful [Jochen Dickinger & Franz Ömer (Case C-347/09)]
- Any advertising issued by the holder of a public monopoly must remain measured and strictly limited to what is necessary in order to channel consumers towards authorized gaming networks. Such advertising cannot in particular aim to encourage consumers natural propensity to gamble by stimulating their active participation in it [Markus Stoß (C-316/07)]

RELEVANT EU GAMBLING ADVERTISING CASE LAW

3. May a member state lawfully make the advertizing of gambling establishments located in another member state conditional upon proof that the legislation of the member state of establishment provides guarantees as regards the level of protection for gamblers that are in essence equivalent to those of the member state that the advertising campaign is addressed to?

HIT and HIT LARIX (Case C-176/11)

- Such a legislation is not precluded, to the extent that it serves the legitimate aim of protecting the residents of the member state concerned against the risks connected with games of chance. However, that latter member state may not lawfully require that the rules in the member state of establishment should be identical to those provided by its own national law and it may not also impose obligations that are not specifically related to protection against the risks of gaming

LIST OF EU GAMBLING ADVERTISING CASE LAW

- Joined Cases C-316/07, C-409/07, C-410/07, C-358/07, C-359/07 & 360/07 Marcus Stoß and others, ECLI:EU:C:2010:504
- Case C-212/08 Zeturf Ltd v Premier minister, ECLI:EU:C:2011:437
- Case C-258/08 Ladbrokes Betting & Gaming Ltd and Ladbrokes International Ltd v Stichting de Nationale Sporttotalisator, ECLI:EU:C:2010:308
- Joined Cases C-447/08 & C-448/08 Criminal proceedings against Otto Sjöberg and Anders Gerdin, ECLI:EU:C:2010:415
- Case C-347/09 Criminal proceedings against Jochen Dickinger and Franz Ömer, ECLI:EU:C:2011:582
- Case C-176/11 HIT and HIT LARIX v Bundesminister für Finanzen, ECLI:EU:C:2012:454
- Case C-336/14 Criminal proceedings against Sebat Ince, ECLI:EU:C:2016:72
- Case C-79/17 Proceedings brought by Gmalieva s.r.o. and others, ECLI:EU:C:2018:687
- Case C-166/17 Sportingbet PLC and Internet Opportunity Entertainment Ltd v Santa Casa da Misericórdia de Lisboa and Others, ECLI:EU:C:2017:790

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