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Press and Information

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Judgment of the Court of Justice in Joined Cases C-338/04, C-359/04 and C-360/04

Criminal proceedings against Massimiliano Placanica and Others

THE COURT OF JUSTICE RULES THAT THE ITALIAN CRIMINAL PENALTIES FOR THE COLLECTING OF BETS BY INTERMEDIARIES ACTING ON BEHALF OF FOREIGN COMPANIES ARE CONTRARY TO COMMUNITY LAW

A Member State may not apply a criminal penalty for failure to complete an administrative formality where, in breach of Community law, such completion is refused or rendered impossible by that Member State

Under Italian legislation, the organising of games of chance or the collecting of bets is subject to possession of a **licence** and a police **authorisation**. Any infringement of those rules carries **criminal penalties** of up to three years' imprisonment.

In 1999, following calls for tenders, the competent Italian authorities awarded 1000 licences for sports betting and 671 new licences for betting on competitive horse events (329 existing licences were automatically renewed). Those licences were valid for six years and renewable for a further period of six years. The calls for tender excluded in particular operators in the form of companies whose shares were quoted on the regulated markets.

One such company was Stanley International Betting Ltd ('Stanley'), a company incorporated under English law, licensed by the City of Liverpool and a member of the group Stanley Leisure plc, an English company quoted on the London stock exchange which at that time was the fourth biggest bookmaker and the largest casino operator in the United Kingdom. Stanley operates in Italy through 'data transmission centres' (DTCs) run by independent operators with contractual links to Stanley, who place a data transmission link at the disposal of bettors so that they can access the server of Stanley's host computer in the United Kingdom.

Mr Placanica, Mr Palazzese and Mr Sorricchio are all DTC operators linked to Stanley. In 2004 they appeared before the Tribunale di Larino and the Tribunale di Teramo, charged with pursuing the organised activity of collecting bets without the required police authorisation. Those courts asked the Court of Justice of the European Communities whether the Italian legislation on betting and gaming is compatible with the Community principles of freedom of establishment and the freedom to provide services.

The Court of Justice points out first that legislation which prohibits – on pain of criminal penalties – the pursuit of activities in the betting and gaming sector without a licence or a police authorisation issued by the State, places restrictions on the freedom of establishment and the freedom to provide services. However, moral, religious or cultural factors, as well as the morally and financially harmful consequences for the individual and for society associated with betting and gaming, may justify such restrictions. Those restrictions must nevertheless satisfy the conditions concerning their proportionality. The Court proceeds to examine the various requirements imposed by Italian legislation.

Licences

Italy is pursuing a policy of expanding activity in the betting and gaming sector, with the aim of drawing players away from clandestine betting and gaming – activities prohibited as such – to activities which are authorised and regulated. The Court recognises that in order to achieve that aim, authorised operators must represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques.

The objective invoked by Italy by way of justification for the licensing requirement is that of preventing the exploitation of activities in the betting and gaming sector for criminal purposes. The Court acknowledges that **a licensing system may constitute an efficient mechanism enabling the control of operators** active in that sector.

The Court does not have sufficient facts before it, however, to be able to assess whether the limitation of the total number of licences is compatible with Community law. **The fact that a particular number of licences was considered on the basis of a specific assessment to be ‘sufficient’ for the whole of the national territory could not of itself justify the obstacles to the freedom of establishment and the freedom to provide services brought about by that limitation.** In that connection, the Court therefore directs the national courts to determine whether, in limiting the number of operators active in the betting and gaming sector, the national legislation genuinely contributes to the objective invoked by the Italian Government, namely, that of preventing the exploitation of activities in that sector for criminal or fraudulent purposes.

The Court also holds that **the blanket exclusion of companies from tender procedures for the award of licences goes beyond what is necessary in order to achieve the objective** of preventing operators active in the betting and gaming sector from being involved in criminal or fraudulent activities. There are other ways of monitoring the accounts and activities of operators which impinge to a lesser extent on the freedom of establishment and the freedom to provide services (for example, the gathering of information on their representatives or their main shareholders). The Court adds that, in view of the unlawful nature of the exclusion of certain operators from the tender procedures, the Member State has an obligation to lay down detailed procedural rules (for example, for the revocation and redistribution of the old licences) to ensure the protection of the rights which those operators derive by direct effect of Community law. Meanwhile, the lack of a licence cannot be a ground for the application of sanctions to such operators.

Police authorisations

The procedure for the grant of a police authorisation presupposed the award of a licence and, in consequence, is vitiated by the same defects as taint the award of the licences. Accordingly, the lack of a police authorisation cannot be a valid ground for complaint in respect of persons who

have been unable to obtain them because, contrary to Community law, they were barred from any possibility of being granted a licence.

The criminal penalties

In principle, criminal legislation is a matter for which the Member States are responsible. However, Community law sets certain limits to that power: criminal legislation may not restrict the fundamental freedoms guaranteed by Community law. The Court makes it clear once again that a Member State may not apply a criminal penalty for failure to complete an administrative formality where such completion has been refused or rendered impossible by the Member State concerned, in breach of Community law. In consequence, Italy cannot apply criminal penalties to persons such as the defendants in the main proceedings for pursuing the organised activity of collecting bets without a licence or a police authorisation.

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Languages available: BG CS DE EL EN ES FR HU IT NL PL PT RO SK SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-338/04>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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