



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-447/08 and C-448/08  
Criminal proceedings against Otto Sjöberg and Anders Gerdin

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**Swedish legislation which prohibits the promotion of gambling organised on the Internet by private operators in other Member States for profit is consistent with Community law**

*However, Community law precludes national legislation which penalises the promotion of gambling organised in Sweden without a licence differently from that of gambling organised outside Sweden*

Swedish legislation on gambling prohibits and penalises the promotion in Sweden of gambling organised outside that Member State. It reserves the right to organise gambling to operators pursuing socially beneficial objectives or those which are in the public interest.

Mr Sjöberg and Mr Gerdin were the editors in chief and publishers, respectively, of the Swedish newspapers Expressen and Aftonbladet. Between November 2003 and August 2004, they published on the sports pages of their newspapers advertisements for gambling offered on the Internet sites of the companies Expekt, Unibet, Ladbrokes and Centrebet, established in Malta and the United Kingdom. On the basis of those facts, considered to infringe the Swedish law on gambling, they were each sentenced to a criminal penalty of a fine of SEK 50 000 (approximately EUR 5 200) at first instance.

The Svea hovrätt (Stockholm Court of Appeal, Sweden), which must rule on the appeals brought by Mr Sjöberg and Mr Gerdin, questions whether the legislation on which the convictions are based and, more specifically, the provisions which fix the penalties applicable to promotion in Sweden of gambling organised outside that Member State, comply with Community law.

In today's judgment, the Court observes first of all that Community law requires the abolition of all restrictions on the freedom to provide services, even if those restrictions apply without distinction to national providers of services and to those from other Member States, when they are liable to prohibit, impede or render less advantageous the activities of a service provider established in another Member State where it lawfully provides similar services.

The Court states that the effect of the Swedish legislation, which prohibits the promotion in Sweden both of gambling organised legally in other Member States and of unlicensed gambling in Sweden, is to restrict Swedish consumers' participation in such gambling.

However, Community law allows restrictions justified, inter alia, on grounds of public policy, public security or public health. In the absence of harmonisation at European Union level as regards gambling, it is for each Member State to determine in that area, in accordance with its own scale of values, how to protect the interests in question. The Member States are therefore free to set the objectives of their policy on gambling and, where appropriate, to define in detail the level of protection sought. The restrictive measures that they impose must nevertheless satisfy the conditions laid down in the case-law of the Court as regards their proportionality and it is necessary to examine in particular whether the Swedish legislation is suitable for achieving the legitimate objective or objectives invoked by that Member State, and whether it does not go beyond what is necessary in order to achieve those objectives.

The Court observes that it is clear that the exclusion of private profit-making interests from the gambling sector is, according to the referring court, a fundamental principle of the Swedish

legislation in this field. Those activities are reserved in Sweden to bodies pursuing objectives which are socially beneficial or in the public interest and licences for the operation of gambling have been granted exclusively to public or charitable bodies.

The Court states in this connection that **considerations of a cultural, moral or religious nature can justify restrictions on the freedom of gambling operators to provide services, in particular in so far as it might be considered unacceptable to allow private profit to be drawn from the exploitation of a social evil or the weakness of players and their misfortune.** According to the scale of values held by each of the Member States and having regard to the discretion available to them, a Member State may restrict the operation of gambling by entrusting it to public or charitable bodies.

Since the gaming operators which caused the advertisements on account of which the criminal proceedings in the main actions were initiated to be published are private undertakings run for profit, which could never have obtained licences for the operation of gambling under Swedish legislation, **the Court concludes that the Swedish legislation reflects the objective of the exclusion of private profit-making interests from the gambling sector and may be regarded as necessary in order to meet such an objective.** Community law therefore does not preclude such legislation.

Next, the Court notes that the Swedish law referred to by the Svea hovrätt provides for criminal sanctions only in relation to the promotion of gambling organised in another Member State and does not apply to the promotion of gambling organised in Sweden without a licence, that latter offence being punishable only by an administrative penalty. It observes, however, that there is a disagreement between the Swedish Government, on the one hand, and Mr Sjöberg and Mr Gerdin, on the other, on the issue of whether another Swedish law provides for penalties for the promotion of gambling organised in Sweden without a licence which are equivalent to those applied in respect of the promotion of gambling organised in another Member State.

The Court points out that, in the context of these proceedings, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice. Consequently, it is for the referring court to examine whether the two infringements at issue, although covered by different laws, are nevertheless subject to equivalent treatment. That court must in particular ascertain whether, on the facts, those infringements are prosecuted by the competent authorities with the same diligence and culminate in the imposition of equivalent penalties by the competent courts.

Thus, the Court concludes that, if the two infringements at issue receive equivalent treatment, the national legislation cannot be regarded as discriminatory. On the other hand, **if the persons carrying out the promotion of gambling organised in Sweden without a licence incur penalties which are less strict than those imposed on the persons who advertise gambling organised in other Member States, then the Swedish arrangements are discriminatory and thus infringe Community law.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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