Court of Justice of the European Union
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Judgment in Case C-409/06
Winner Wetten GmbH v Bürgermeisterin der Stadt Bergheim, in Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07 Markus Stoss and Others v Wetteraukreis, Kulpa Automatenservice Asperg GmbH and Others v Land Baden-Württemberg, and in Case C-46/08 Carmen Media Group Ltd v Land Schleswig-Holstein and Others

Press and Information

# The public monopoly of the organisation of sporting bets and lotteries in Germany does not pursue the objective of combating the dangers of gambling in a consistent and systematic manner

In Germany, jurisdiction over gambling is divided between the federal State and the Länder. In most of the Länder, there is a regional monopoly for the organisation of sporting bets and lotteries, while the organisation of bets on horse racing and the operation of gaming machines and casinos are entrusted to duly-authorised private operators. By the treaty on lotteries in Germany (Lotteriestaatsvertrag), which came into force on 1 July 2004, the Länder created a uniform framework for the organisation of games of chance, apart from casinos. Following a judgment of the Budesverfassungsgericht (German Federal Constitutional Court), that treaty was replaced by the treaty on games of chance in Germany (Glücksspielstaatsvertrag) which entered into force on 1 January 2008. The latter prohibits all organisation or intermediation of public games of chance on the internet.

In the present cases, various German courts are asking the Court of Justice to rule on the compatibility of the rules on games of chance in Germany with European Union law.

In *Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07*, the Verwaltungsgerichte (Administrative Courts) of Giessen and Stuttgart have to resolve disputes between, on the one hand, intermediaries for sporting bets and, on the other, the German authorities, which have prohibited those intermediaries from offering in the Länder of Hessen and Baden-Württemberg sporting bets organised by the Austrian undertakings Happybet Sportwetten and Web.coin, the Maltese undertaking Tipico, the British company Happy Bet and the Digibet company established in Gibraltar. Those undertakings hold, in their respective countries, authorisations to organise sporting bets.

In *Case C-46/08*, the Schleswig-Holsteinisches Verwaltungsgericht (Administative Court of Schleswig-Holstein) has to determine, by contrast, whether the Land Schleswig-Holstein was right to reject the application of the Carmen Media Group for authorisation to offer sporting bets in Germany via the internet, in circumstances where that undertaking holds in Gibraltar, where it is established, an "off-shore" licence, authorising it to organise bets only outside Gibraltar.

Finally, in *Case C-409/06*, the Verwaltungsgericht Köln (Administrative Court, Cologne) has before it a dispute between an intermediary for sporting bets, acting on behalf of the Maltese undertaking Tipico, and the German authorities. That court asks the Court of Justice whether the principle of the primacy of Union law over national law allows Member States to continue to apply, by way of exception and during a transitional period, a regulation concerning a public monopoly on sporting bets which contains unlawful restrictions on the freedom of establishment and the freedom to provide services.

The Court of Justice finds, first, that the German rules on sporting bets constitute a restriction on the freedom to provide services and the freedom of establishment. Nevertheless, the Court recalls that such a restriction may be justified by imperative reasons in the public interest, such as

preventing incitement to squander on gambling and combating gambling addiction. However, the national measures for attaining those objectives must be suitable for attaining them and must be limited to the restrictions necessary for that purpose.

In that regard, the Court considers that, with a view to channelling the desire to gamble and the operation of games into a controlled circuit, Member States are free to establish public monopolies. In particular, such a monopoly is likely to overcome the risks connected with the gaming industry more effectively than a system under which private operators are authorised to organise bets subject to compliance with the relevant legislation.

Next, the Court observes that the fact that some games of chance are subject to a public monopoly whilst others are subject to a system of authorisations issued to private operators cannot, in itself, call into question the consistency of the German system as those games have different characteristics.

However, the Court of Justice finds that, having regard to the findings which they made in those cases, the German courts are right to take the view that **the German rules do not limit games of chance in a consistent and systematic manner**. First, the holders of public monopolies carry out intensive advertising campaigns with a view to maximising profits from lotteries, thereby departing from the objectives justifying the existence of those monopolies. Secondly, with regard to games of chance such as casino games and automated games, which do not fall within the public monopoly but carry a greater risk of addiction than games which are subject to that monopoly, the German authorities carry out or tolerate policies designed to encourage participation in those games. In such circumstances, the preventive objective of that monopoly can no longer be pursued, so that the monopoly **ceases to be justifiable**.

The Court of Justice further notes that national rules concerning that monopoly, held to be contrary to the fundamental freedoms of the Union, cannot continue to apply during the time necessary to bring it into conformity with Union law.

Finally, the Court of Justice recalls that Member States have a broad discretion in determining the level of protection against the dangers emanating from games of chance. Thus, and in the absence of any Community harmonisation in the matter, Member States are not required to recognise authorisations issued by other Member States in that area. For the same reasons, and having regard to the risks posed by games of chance on the internet in comparison with traditional games of chance, Member States may also prohibit the offering of games of chance on the internet.

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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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