

Press and Information Division

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Opinion of Advocate General Siegbert Alber in Case C-243/01

Criminal proceedings against Piergiorgio Gambelli and Others

**THE ADVOCATE GENERAL REGARDS THE ITALIAN PROHIBITION
ON THE TAKING OF CROSS-BORDER BETS AS CONTRARY TO THE
FREEDOM TO PROVIDE SERVICES**

An organiser of bets who is established in another Member State and carries out his activity in accordance with the legislation of that State should also be able to carry out business in Italy

Mr Gambelli and over 100 other defendants ran data transfer centres in Italy, linked by internet with an English bookmaker and collecting sporting bets in Italy on behalf of that bookmaker. In Italy, however, such activity is reserved for the State or State-licensed undertakings.

Criminal proceedings were accordingly brought against Mr Gambelli and the others for taking unlawful bets.

Mr Gambelli argues that the Italian legislation infringes the Community law principles of freedom of establishment and the freedom to provide services.

The matter came before the Tribunale di Ascoli Piceno (Regional Court, Ascoli Piceno), which has asked the Court of Justice how the provisions of the EC Treaty are to be interpreted in this connection.

Advocate General Siegbert Alber presents his Opinion in this case today.

The Opinion of the Advocate General is not binding on the Court of Justice. The task of the Advocate General is, acting with complete independence, to propose to the Court a legal solution to the cases before it.
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In the view of the Advocate General, the present case goes beyond the issues discussed in the hitherto-existing case-law of the Court of Justice on State regulation of games of chance.¹

The Advocate General takes the view that the data transfer centres are not branches of the English bookmaker. On the basis of the case-law of the Court of Justice, he takes the view, rather, that they went into business as providers of services. In the final analysis, however, the matter is one for determination by the national court.

Infringement of the freedom of establishment

If, however, there were a branch of the English bookmaker in Italy, the latter would have to be able to compete for the grant of a licence in the same way as Italian nationals, and the licensing system would have to satisfy the general Community law requirements for legislation of a Member State restricting the exercise of an economic activity.

In the opinion of the Advocate General, the **Italian provisions** do not satisfy those requirements because, *inter alia*, they **are framed in an openly discriminatory manner and are not adequate for the protection of consumers and social order.**

Infringement of the freedom to provide services

Since the provisions which prevent organisers of bets from other Member States from taking bets in Italy constitute an obstacle to the freedom to provide services in any event, they must be capable of being justified by imperative requirements.

The Advocate General concludes, however, that the Italian legislation cannot be justified. **The legislation of the Member State of origin of the organiser of the bets** (in this case the United Kingdom) **already provided a sufficient guarantee of the integrity of the organiser.** As far as discouraging gambling is concerned, the actual increase in the availability of games of chance facilitated by the Italian legislature in recent years belies the existence of a coherent policy of limiting gambling opportunities. **For that reason, the alleged objectives, which are not (or are no longer) pursued in reality, are not sufficient to justify impeding the freedom to provide services of offerors established and duly authorised in other Member States.**

In the opinion of the Advocate General, the feared negative financial consequences for the economies of some States arising out of a relative opening up of Member States' markets for games of chance also cannot serve as justification.

Note: The Judges of the Court of Justice now retire to consider their verdict in this case. The Judgment will be announced at a later date.

1 Judgments in Case C-275/92 *Schindler* of 24.03.94, Case C-124/97 *Läärä* of 21.09.99, and Case C-67/98 *Zenatti* of 21.10.99

Unofficial document for media use only; not binding on the Court of Justice.

Languages available: German, English, French, Italian, Dutch and Spanish

*For the full text of the Opinion, please consult our Internet page
www.curia.eu.int at approximately 3pm today.*

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